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17 P R O C E E D I N G S

18
19 COURT SECURITY OFFICER: All rise.

20 (Jury in.)

21 THE COURT: Please be seated.

22 Morning, Ladies and Gentlemen. Thank you
23 very much for being here.

24 Morning, Counsel. Appreciate y'all being
25 here timely.

1 We're going to get started here in just a
2 few minutes. And as you know, our schedule, we're going
3 to work today, Wednesday, and Thursday. The courthouse
4 is closed for July 4th, and we'll come back next week
5 and finish this case up then.

6 At this time, I want -- for
7 announcements, for the record in this case of
8 LaserDynamics versus the Quanta Defendants, Cause Number
9 2:06-CV-348. When you make your announcement, please
10 reintroduce yourself to the jury so that they'll know.

11 Who'll be talking for the Plaintiff.

12 MR. SANKEY: Your Honor, Tom Sankey, on
13 behalf of LaserDynamics for the Plaintiff, and we're
14 ready to proceed.

15 THE COURT: Okay. All right. For
16 Defendant?

17 MR. PARKER: John Parker on behalf of the
18 Defendants, Your Honor. We are ready to proceed.

19 THE COURT: Okay. Good.

20 All right. Ladies and Gentlemen, I need,
21 the first thing, to give you some preliminary
22 instructions in this case. I know that some of you've
23 served as jurors in state court cases. And one of the
24 main difference that I -- for jurors in state court, as
25 opposed to what's going to happen in federal court, is

1 at the end of the trial, all of the instructions that
2 the Court has given to you during the course of the
3 trial are handed to you in written form. That's not
4 true in federal court.

5 All my instructions to you will be
6 orally, and you'll be -- at the end of the case, you'll
7 be asked to answer some questions based upon my
8 instructions on the law and the evidence that you've
9 heard. So for that reason I ask that you pay close
10 attention to my remarks.

11 You've been previously sworn as the jury
12 to try the case. And as the jury, you will decide the
13 disputed questions of fact. As the Judge, I will decide
14 all questions of law and procedure. From time to time,
15 during the trial and at the end of trial, I will
16 instruct you on the rules of law that you must follow in
17 making your decision.

18 Now, we all know this is a patent case.
19 Have the jurors yet been furnished their jury notebooks
20 or not?

21 MR. SANKEY: Your Honor, I believe
22 they're on the table right here in front of the court
23 reporter.

24 THE COURT: Okay. Why don't we go ahead
25 and hand them their notebooks, because I'm going to talk

1 to them about the patent in just a moment.

2 (Jury notebooks distributed.)

3 THE COURT: All right. Thank you,
4 Mr. McAteer. That's fine.

5 We'll talk about it in just a moment on
6 opening, but I will refer to them. But as you know,
7 this is a patent case, and you've seen the film, I
8 believe, of -- before you were selected.

9 But it involves a dispute relating to a
10 United States patent. Before summarizing the position
11 of the parties, I'm going to review with you again and
12 explain what a patent is and how one is obtained.

13 The United States Constitution grants
14 Congress the power to enact laws to promote the progress
15 of science and useful arts by securing, for limited
16 times, to authors and inventors the exclusive right to
17 their respective writings and discovery.

18 Now, with this power, Congress enacted
19 our patent laws. Patents are granted by the United
20 States Patent & Trademark Office, many times referred to
21 as the PTO. The process of obtaining a patent is called
22 patent prosecution.

23 A valid United States patent gives a
24 patent owner the right, for up to 20 years from the date
25 the patent application was filed, to prevent others from

1 making, using, offering to sell, or selling the patented
2 invention within the United States or from importing it
3 into the United States without the patent holder's
4 permission.

5 A violation of the patent owner's rights
6 is called infringement. The patent owner may try to
7 enforce a patent against persons believed to be
8 infringers by a lawsuit filed in a federal court.

9 To obtain a patent, one must file an
10 application with the PTO. The PTO is an agency of the
11 federal government and employees, trained examiners, who
12 review the applications for patents.

13 The application includes what is called a
14 specification, which must contain a written description
15 of the claimed invention telling what the invention is,
16 how it works, how to make it, and how to use it so that
17 others skilled in the field will know how to make and
18 use it. The specification concludes with one or more
19 numbered sentences. These are the patent claims.

20 If you look there in your notebook, the
21 first thing you've got is the patent. And if you turn
22 to the very back of the last part of the patent, you'll
23 see these last -- these numbered paragraphs at the very
24 end of the patent. Those are the claims. I just wanted
25 you to know where you could find them. They're always

1 at the end of the patent, and they're numbered
2 paragraphs.

3 It is the claims -- when the patent is
4 eventually granted by the PTO, it is these claims that
5 define the boundaries of its protection and give notice
6 to the public of what those boundaries are and what is
7 protected by the patent.

8 And after the applicant files the patent
9 application, the PTO, or Patent Examiner, reviews the
10 patent application to determine whether the claims are
11 patentable and whether the specification adequately
12 describes the invention claimed.

13 In examining a patent application, the
14 Patent Examiner reviews records available to the PTO for
15 what is referred to as prior art. The Examiner also
16 reviewed prior art if it is submitted to the PTO by the
17 applicant. Prior art is defined by law, and at a later
18 time, I will give you some very specific instructions as
19 to what constitutes prior art.

20 However, in general, prior art includes
21 things that existed before the claimed invention that
22 were publicly known or used in a publicly accessible way
23 in this country or that were patented or described in a
24 publication in any country.

25 The Examiner considers, among other

1 things, whether each claim defines an invention that is
2 new, useful, and not obvious in view of the prior art.

3 Now, the patent lists the prior art at
4 the front of the patent that the Examiner considered.
5 When you look there at the front part of your patent, on
6 the first page, the list is called the cited references.

7 Now, after a prior art search and
8 examination of the application, the Patent Examiner then
9 informs the applicant in writing what the Examiner has
10 found and whether any claim is acceptable and thus will
11 be allowed. This writing from the Patent Examiner is
12 called an office action.

13 If the Examiner rejects the claims, the
14 applicant then responds and sometimes changes the claims
15 or submits new claims. This process which takes place
16 only between the Examiner and the patent applicant may
17 go back and forth for some time until the Examiner is
18 satisfied that the application and the claims meet the
19 requirements for a patent.

20 The papers that are generated during this
21 time of communicating back and forth between the Patent
22 Examiner and the applicant make up what is called the
23 prosecution history. All of this material becomes
24 available to the public no later than the date when the
25 patent issues.

1 Now, the fact that the PTO grants a
2 patent does not necessarily mean that any invention
3 claimed in the patent, in fact, deserves the protection
4 of a patent. For example, the PTO may not have had
5 available to it all the information that will be
6 presented to you in this trial.

7 A person accused of infringement has the
8 right to argue here in federal court that a claimed
9 invention in a patent is invalid because it does not
10 meet the requirements of the patent.

11 To take it a little bit further, look at
12 the patent there at the front page of your patent that
13 you have. The cover page of the patent provides
14 identifying information, including the date the patent
15 issued and the patent number along the top of it, as
16 well as the inventors' names, the filing date, and as I
17 mentioned before, a list of the cited references that
18 were considered by the PTO.

19 Then you find that the specification
20 begins with an abstract, and the abstract is a brief
21 statement about the subject matter of the invention.

22 Next, you will find drawings. The
23 drawings illustrate various aspects of the features of
24 the invention. The written description of the invention
25 appears next and is organized into two columns on each

1 page.

2 And you have each line -- about every
3 five lines, there's a number out at the side so you
4 can -- when you refer to a column and Line 23, you can
5 find it pretty quickly.

6 The specification then ends with these
7 numbered paragraphs that I mentioned to you earlier.
8 These are the patent claims, and it is those patent
9 claims that determine the scope of the invention and
10 what is entitled to protection.

11 Now, to help you follow the evidence in
12 this case, I want to give you a brief summary of the
13 position of the parties. The Plaintiff in this case is
14 LaserDynamics, Inc. The Defendants in this case are
15 Quanta Storage, Inc., Quanta Computer USA, Inc., Quanta
16 Storage America, Inc., and Quanta Computer, Inc.

17 Now, the parties and I may refer to the
18 Defendants collectively as Quanta or the Defendants.

19 As you know, the patent, there before
20 you, is a United States patent, and that number is
21 5,587,981. Now, for convenience, the parties and I will
22 oftentimes refer to the patent by the last three digits
23 of the patent number. So in other words, this case
24 involves the '981 patent.

25 The Plaintiff files suit in this Court

1 seeking money damages from the Defendants for allegedly
2 infringing Claim 3 of the '981 patent by acts of
3 contributory infringement and inducing the use of a
4 certain optical disk device that constitutes
5 infringement.

6 The Plaintiff further alleges that the
7 Defendants' infringement was willful. The Defendants
8 deny that they -- that they infringe Claim 3 of the
9 patent, and they deny that there's any willful
10 infringement and deny -- and they contend it is their
11 position that Claim 3 of the patent, the one asserted
12 claim in this case, is invalid.

13 Now, your job in this case will be to
14 decide whether Claim 3 of the '981 patent has been
15 infringed and whether the claim is invalid. If you
16 decide that Claim 3 has been infringed and not -- is not
17 invalid, then you will need to decide any money damages
18 that should be awarded to the Plaintiff to compensate
19 the Plaintiff for the infringement.

20 You will also need to make a finding as
21 to whether the infringement was willful. If you decide
22 that any infringement was willful, that decision should
23 not affect any damage award you give. It is for the
24 Court, and I will take willfulness into account later.

25 It is my job to determine the meanings of

1 any claim language that needs interpretation. You must
2 accept the meanings I give you and use them when you
3 decide whether any claim of the patents has been
4 infringed and whether any claim is invalid.

5 There in your notebook, you have been
6 provided with a copy of the meaning that I have adopted
7 for certain claim terms.

8 I'll talk to you generally about the
9 trial. As soon as I finish these preliminary
10 instructions, the lawyers for the parties will make what
11 is called an opening statement. Now, opening statements
12 are intended to assist you in understanding what the
13 evidence that you will hear following it. What the
14 lawyers say is not evidence.

15 After the opening statements, the parties
16 will then present their evidence. And after all the
17 evidence is presented, the lawyers will again address
18 you to make final arguments. Then I will give you my
19 final instructions on the law, and you will thereafter
20 retire to deliberate on your verdict.

21 Let me talk to you a little bit about
22 your conduct as jurors. First, you are not to discuss
23 this case with anyone, including your fellow jurors,
24 members of your family, people involved in the trial, or
25 anyone else, nor are you allowed to permit others to

1 discuss the case with you.

2 Should anyone approach you and try to
3 talk to you about the case, please let me know about it
4 immediately.

5 Second, do not read any news story or
6 articles, listen to any radio or television reports
7 about the case or about anyone who has anything to do
8 with it.

9 Third, do not do any research, such as
10 consulting dictionaries or searching on the internet or
11 using other reference materials. And do not make any
12 investigation of any type about the case on your own.

13 Fourth, if you need to communicate with
14 me, simply give a note here to our court security
15 officer, Mr. Pete McAteer, and he will give it to me.

16 Fifth -- this is very important; all of
17 these are important -- do not make up your mind about
18 this case or what the verdict should be until after you
19 have gone to the jury room to decide the case and you
20 and your fellow jurors have had the opportunity to
21 discuss the evidence.

22 Keep an open mind. Remember, the
23 Plaintiff goes first, then the Defendant will go, and
24 then there may be some rebuttal testimony. But you need
25 to have heard all the evidence, the argument of counsel,

1 and my instructions on the law before you make up your
2 mind. So please keep an open mind.

3 Now, during the trial, it is -- may be
4 necessary for me to confer with the lawyers out of your
5 hearing or to conduct a part of the trial out of your
6 presence. I will handle these matters as briefly and as
7 conveniently for you as I can. But you should remember
8 that they are a necessary part of any trial.

9 With respect to evidence, the evidence
10 that you are to consider in deciding what the facts are
11 consist of sworn testimony of any witness, the exhibits
12 which are received into evidence, and any facts to which
13 the lawyers stipulate -- stipulate.

14 What's not evidence?

15 The following things are not evidence,
16 and you must not consider them as evidence in deciding
17 the facts of the case: Statements and arguments of the
18 attorneys, questions and objections of the attorney,
19 testimony that I instruct you to disregard, and anything
20 that you may see or hear when the Court is not in
21 session, even if what you see or hear is done or said by
22 one of the parties or by one of the witnesses.

23 Now, evidence may be direct or it may be
24 circumstantial. Direct evidence is proof of a fact,
25 such as testimony by a witness about what the witness

1 personally saw or heard or did. Circumstantial evidence
2 is proof of one or more facts from which you can find
3 another fact.

4 You should consider both kinds of
5 evidence. The law makes no distinction between the
6 weight to be given either direct or circumstantial
7 evidence. It is for you to decide how much weight to
8 give any evidence.

9 In deciding facts in this case, you may
10 have to decide, and undoubtedly you will have to decide,
11 which testimony to believe and which testimony not to
12 believe. You may believe everything a witness says,
13 part of it, or none of it.

14 In considering the testimony of any
15 witness, in deciding their credibility, you may take
16 into account the opportunity and ability of the witness
17 to see, hear, or know the things testified to, the
18 witness' memory, the witness' manner while testifying,
19 the witness' interest in the outcome of the case and any
20 bias or prejudice they may have, and whether the other
21 evidence contradicted the witness' testimony, the
22 reasonableness of the witness' testimony in light of all
23 the evidence, and any other factors that you believe
24 bear on their credibility or believability of their
25 testimony.

1 Now, the weight of the evidence as to a
2 fact does not necessarily depend on the number of
3 witnesses who testify. You must consider only evidence
4 in the case. However, you may draw such reasonable
5 inferences from the testimony and exhibits as you feel
6 are justified in light of your common experience.

7 You may make deductions and reach
8 conclusions that reason and common sense lead you to
9 make from the testimony and evidence.

10 This is a patent case. There's going to
11 be some technical testimony, testimony from different
12 experts. The best tool that you have in deciding this
13 case is your collective wisdom and your common sense.

14 Do not leave your common sense outside
15 this courtroom. It will serve you well.

16 The testimony of a single witness may be
17 sufficient to prove any fact, even if a greater number
18 of witnesses have testified to the contrary, if, after
19 considering all the other evidence, you believe the
20 single witness.

21 I'll talk to you -- I've mentioned a
22 couple of terms on the day we selected the jury. These
23 are very important terms. I'll mention them again to
24 you.

25 Let's talk about the burden of proof;

1 first, about preponderance of the evidence.

2 When a party has the burden of proof on
3 any claim or affirmative defense by a preponderance of
4 the evidence, it means you must be persuaded by the
5 evidence that the claim or affirmative defense is more
6 likely true than not true. You should base your
7 decision on all the evidence, regardless of which party
8 presented it.

9 You'll recall, perhaps, that when we
10 selected the jury, we talked about the scales of
11 justice. You've heard no evidence in this case, so at
12 this time, the scales start off exactly even.

13 If at the end of the trial, in order to
14 meet the burden of a preponderance of the evidence where
15 the party has the burden by a preponderance of the
16 evidence, if the scales of credible testimony that which
17 you believe tip ever so slightly, they have met their
18 burden of proof by a preponderance of the evidence.

19 Another burden of proof that you'll be
20 called upon to apply in this case is the clear and
21 convincing evidence. Now, when a party has the burden
22 of proving any claim or defense by clear and convincing
23 evidence, it means the party must persuade you that it
24 is highly probable that the facts are as that party
25 contends.

1 Looking at the scales of justice, they
2 must be tipped more heavily in favor of the party with
3 the burden to prove by clear and convincing evidence.

4 That is not to be confused with beyond a
5 reasonable doubt in a criminal case that you hear a lot
6 about in TV. The scales would have to be tipped even
7 much greater, because in that case, a person's liberty
8 is at stake.

9 Again, you should base your decision on
10 all the evidence on which party -- regardless of which
11 party presents it.

12 Now, we're going to hear testimony from
13 what are known as expert witnesses. And when knowledge
14 of a technical subject may be helpful to the jury, a
15 person who has special training or experience in that
16 technical field, called an expert witness, is permitted
17 to state his or her opinion on those technical matters.

18 However, you are not required to accept
19 that opinion. As with any other witness, it is up to
20 you to decide whether or not to rely on the expert
21 witness' testimony.

22 Undoubtedly, there will be depositions in
23 this case, Counselor?

24 MR. SANKEY: Yes, Your Honor, there will
25 be.

1 THE COURT: Are they all video or some of
2 them?

3 MR. SANKEY: There are a few short ones
4 that will be just read.

5 THE COURT: Okay.

6 MR. PARKER: That's correct, Your Honor.

7 THE COURT: All right. During the trial
8 of this case, certain testimony may be presented -- will
9 be presented to you by way of deposition. This is a
10 testimony of a witness, who for some reason, cannot be
11 present to testify from the witness stand. It will be
12 presented either in writing or by way of a video.

13 In both cases, the testimony is under
14 oath in the form of a deposition. Such testimony is
15 entitled to the same consideration, and insofar as
16 possible, is to be judged as to credibility, weight, and
17 otherwise considered by the jury in the same way as if
18 the witness had been present and given from the witness
19 stand the testimony read or shown to you from the
20 deposition on the video.

21 It is the duty of the lawyer on each side
22 of the case to object when the other side offers
23 testimony or other evidence which the attorney believes
24 is not properly admissible.

25 Now, upon allowing testimony or other

1 evidence to be introduced over the objection of an
2 attorney, the Court does not, unless expressly stated,
3 indicate any opinion as to the weight or effect of such
4 evidence.

5 As I've said to you before, the jurors
6 are the sole judges of the credibility of all the
7 witnesses and the weight and effect of all evidence.

8 However, when the Court sustains an
9 objection to a question addressed to the witness, the
10 jury must disregard the question entirely and may draw
11 no inference from the wording of it or speculate as to
12 what the witness would have said, if permitted to answer
13 any question.

14 The law of the United States permits the
15 judge to comment to the jury on the evidence in the
16 case. Such comments are only expressions of the judge's
17 opinions as to the facts, and the jury may disregard
18 them entirely since the jurors are the sole judges of
19 the facts.

20 Now, that is the end of my preliminary
21 instructions.

22 Will the Rule be invoked in this case?

23 MR. SANKEY: Your Honor, we would move to
24 invoke the Rule.

25 MR. PARKER: We agree, Your Honor.

1 THE COURT: All right. I'll excuse
2 expert witnesses from the application of the Rule.

3 MR. PARKER: Yes, sir.

4 THE COURT: And -- do we have other fact
5 witnesses present?

6 MR. SANKEY: We don't have any, other
7 than the parties, Your Honor.

8 MR. PARKER: We don't either, Your Honor.

9 THE COURT: Okay. You've got designated
10 representatives present. They're excused from the Rule.

11 All right. Be seated, Counsel.

12 Let me just explain to the jury what the
13 Rule means. As to witnesses other than the designated
14 representatives of the parties and experts who are
15 allowed to hear the testimony, since they will need to
16 hear the testimony perhaps or may wish to so that they
17 can express their opinions based on what they've heard,
18 other witnesses have to remain outside the courtroom.
19 And they cannot hear what other witnesses testify to.
20 And they are prohibited, from this point forward, from
21 discussing their testimony with anyone, other than the
22 lawyer. And the witness as well as the lawyer has a
23 duty to be sure that when they are talking to a
24 particular witness that they are out of the earshot of
25 any other person, so they can't hear what's being said.

1 And so the lawyers are instructed to be
2 sure that in talking with any witness before they come
3 on the stand that they are out of earshot.

4 Nothing further, we'll now hear opening
5 statements from the Plaintiff. Mr. Sankey?

6 MR. SANKEY: Thank you, Your Honor. May
7 it please the Court, counsel.

8 Ladies and Gentlemen of the Jury, good
9 morning.

10 We thank you for being here and being
11 chosen as jurors, and we ask that we be allowed to
12 present our evidence to you over the next several days,
13 and that you use your common sense, as Judge Ward told
14 you, to make a decision and answer the questions that
15 will be presented to you at the end of the case.

16 A quick reintroduction, because it has
17 been several weeks since we met the first time. My name
18 is Tom Sankey. The Plaintiff in this case is
19 LaserDynamics, who is represented by the President of
20 the company, Mr. Yasuo Kamatani.

21 I have with me at counsel table, Mr. Greg
22 Luck. I have Mr. Jeff Rabin. And then you'll see
23 throughout the courtroom a number of people that will be
24 assisting us during the trial of this case. We have
25 Wendy that is handling the graphics. We have Eileen

1 that is handling exhibits for us, and a number of other
2 lawyers that are working behind the scenes on important
3 issues that we discuss with the Judge when you're not in
4 the courtroom.

5 This is a very important case not only
6 for LaserDynamics and Mr. Kamatani but for the patent
7 system. As you are aware by now, the United States
8 government issued Mr. Kamatani a patent, and when they
9 issue the patent, they have a nice little red ribbon on
10 it, because this is the official one that they issued to
11 him.

12 You will hear testimony that he applied
13 for this patent in 1995, and that date is going to be on
14 the left side of the first page. And the top right-hand
15 corner shows the date that it was issued, which was at
16 the very end of 1996. The dates in this case are going
17 to be very important to you, and you're going to hear me
18 talk about them a lot.

19 The technology, as we discussed before,
20 and you'll hear the experts describe it in much better
21 detail than I ever could, but the technology has to do
22 with optical disk drives, which you find in almost every
23 computer, which you find in DVD players, which you find
24 in CD players.

25 As I mentioned to you during the jury

1 selection, you have disks that look identical. A CD
2 that plays music, a DVD that plays movies, if you hold
3 them up and look at them with the naked eye, you can't
4 tell the difference.

5 The problem is, when you put it into the
6 machine, the machine has to figure out which one it is
7 before it starts playing, because it uses different
8 methods to do so. And this is what's referred to as a
9 method patent.

10 We refer to that or we talk about that
11 amongst the lawyers and the experts as disk
12 discrimination. It discriminates between what type of a
13 disk it is about to play, and then it plays it.

14 You will hear testimony that the
15 Defendants' products that they make and sell and ship
16 into the United States, these drives, do just that; they
17 discriminate between what type of a disk it is, and then
18 they play it.

19 There are two things that Judge Ward said
20 this morning that are of such importance that I want to
21 say them again and talk about them just briefly.

22 The first thing that he has said on a few
23 occasions is that what the lawyers in the case say is
24 not evidence. What I'm saying to you in opening
25 statement is not evidence, what I'll say to you in

1 closing argument is not evidence, what Mr. Parker says
2 to you is not evidence.

3 All the evidence that you're going to get
4 in this case will come from that witness stand up there
5 and/or from the exhibits that the Judge has admitted in
6 this case. And he has preadmitted most exhibits for
7 both the Plaintiff and for the Defendant. And those are
8 in evidence, and you'll get a good chance to see those.

9 The important thing about that is, and
10 I'll give you the example, during jury selection,
11 Mr. Parker said, you know, what if we have a contract
12 that says X?

13 And one of the panel that was out there,
14 not one that was chosen to be on the jury, but one of
15 them raised his hand, and he said, well, I'd have to see
16 the contract, and I'd have to read the contract.

17 That's exactly the right answer. That's
18 exactly right, because that contract will be in
19 evidence, and what that contract says is what you are to
20 rely upon in making your decision, not what Mr. Parker
21 says, not what Mr. Sankey says.

22 Again, the exhibits and the witnesses are
23 extremely important to you, and we will have those
24 agreements before you, and we will walk through those --
25 a few of those exhibits with the witnesses and look at

1 them to see what they say, not what the Defendants tell
2 you they say.

3 The second thing that Judge Ward told you
4 that is of extreme importance, when it comes time to
5 make your decision in this case, was the burden of
6 proof. And we've got the scales of justice up here, and
7 I've heard it described just a little bit different than
8 Judge Ward did that I'll tell you. But, basically,
9 again you have the scales, and the Plaintiff will put on
10 their evidence for the first half of the case, and then
11 the Defendants will put on their evidence. The
12 Plaintiff will come back.

13 At the end of the case, if there's 3
14 ounces on this side and 3 ounces on this side and the
15 Plaintiff has an exhibit that is a feather and he puts
16 it on their side, that is meeting the preponderance of
17 the evidence. It is more likely than not that this is
18 true than this is true, if you have one feather more on
19 one side of that scale than on the other.

20 It is a -- a rather light burden, but it
21 is the burden that you will be using in deciding at
22 least two issues against the Defendants.

23 One, do they infringe?

24 Again, the burden is going to be one
25 feather more or not.

1 The amount of damages that you decide in
2 the case, preponderance of the evidence, one feather
3 more or not.

4 The other burden that we talked about is
5 the clear and convincing burden, a much higher burden
6 than just one feather. And Judge Ward, before you
7 retire to make your decision at the end of this case,
8 will give you definitions of preponderance, and he'll
9 give you definitions of clear and convincing.

10 Now, as Judge Ward told you, when the
11 United States, or since the United States government has
12 issued this patent, after going through a process where
13 they have an Examiner that is trained, and he issues it
14 and says this is a valid patent, there is a presumption
15 that it is valid.

16 Now, the Defendants, as part of their
17 defense, are going to say, well, if we infringe and if
18 you think we owe damages, well, we want to fight this
19 and say the government shouldn't have done this; they
20 made a mistake; they're wrong; the patent is invalid.
21 And you will be asked a question at the end of the case,
22 do you find that the patent is not invalid.

23 On that, you have the much higher burden
24 of clear and convincing, and it makes sense, because
25 there's a presumption of validity because it's already

1 been issued by the government, and they're trying to
2 change that decision.

3 So when you answer that question again,
4 read the burden, because it has to be a much higher
5 clear and convincing in your mind that the patent is not
6 valid.

7 Let me talk to you about what I expect
8 the evidence to be over the next several days and how I
9 think it will be presented to you. And Mr. Parker will
10 do the same thing when he gives his opening. We're not
11 a hundred percent right.

12 We don't know what the witnesses are
13 going to say. We have an idea of what they're going to
14 say, because during the discovery in this case, we've
15 taken depositions; we've exchanged documents. We have
16 an idea, but we're not a hundred percent certain.
17 Of course, you're going to hear from Mr. Kamatani, the
18 President of LaserDynamics. As I told you in jury
19 selection, born and raised in Japan. Came to the United
20 States and went to the Massachusetts Institute of
21 Technology, MIT, in Boston.

22 Applied or began applying for patents,
23 and he's obtained a number of patents. You'll hear
24 about them. And he obtained what we're referring to in
25 this case as the '981 patent.

1 Mr. Kamatani followed the rules. He will
2 testify about his background. You'll understand where
3 he's from, a little bit about his family life, how he
4 came to the United States and got his education, and how
5 he began applying for and obtaining patents from the
6 United States government.

7 He's also going to tell you what happened
8 after he got his patents and the fact that he had a
9 number of companies in Japan and in Taiwan and in the
10 United States that came to him and said we would like to
11 use your technology, but we know the government has now
12 given you protection on your technology, so we're
13 willing to pay you money and get a license so that we
14 can use it and sell products using your technology in
15 the United States.

16 Mr. Kamatani is going to testify to you
17 about what has been happening in the industry, the DVD,
18 the optical disk drive industry, from about 1995 through
19 today, 2009. And, again, we're back to talking about
20 what I'll put up here in a minute on a timeline to show
21 you '95 -- 1995 through 2009.

22 And that timeline will be critical,
23 critical to you in making your decisions in this case,
24 because this is a rapidly growing industry, a rapidly
25 changing industry. In the last ten years, it's gone

1 from infancy to where it is today. You'll see and hear
2 evidence of that.

3 Let me talk to you just for a minute
4 about something that happened over the last two years.
5 This lawsuit, by the way, was filed in, I believe,
6 August of 2006. During that time period, we've been
7 conducting discovery, exchanging documents, taking
8 depositions of witnesses.

9 But one of the things that people that
10 consider themselves in the same industry or potential
11 competitors, they don't want each other sometimes to see
12 each other's documents. So they have contracts that
13 they didn't want Mr. Kamatani to see. We had things we
14 didn't want them to see, and they get marked attorney's
15 eyes only.

16 The Court enters an order saying you can
17 do that, and so there are many documents that they have
18 given to our side that Mr. Kamatani hasn't been able to
19 see. The lawyers can look at them, his expert witnesses
20 can look at them, but he cannot see them because of
21 their confidential nature.

22 The issue there and the reason I bring
23 that up is that when Mr. Kamatani testifies, he has
24 never seen many of those agreements that they entered
25 into. He hasn't seen their financial numbers. He

1 doesn't know what their sales have been into the United
2 States over the last two or three years. And so he's
3 not going to know the answer to those questions, and
4 that's precisely why.

5 His expert witnesses have reviewed those
6 documents. They know the contracts. They know the
7 numbers. And when they get on the stand, they're going
8 to tell you what those documents say. They'll show you
9 the documents, and they'll tell you what the numbers
10 are.

11 But I wanted you to understand what
12 attorney's eyes only documents are that the parties
13 exchange between each other so that if a witness for
14 either side says I haven't been allowed to see that
15 document, I don't know the answer to that, you'll
16 understand as opposed to say, well, why doesn't he know
17 the answer to that. That's the reason why.

18 Wendy, could we put up the timeline for a
19 second?

20 And as I told you, I think, in my
21 opinion, this timeline is going to be critical in you
22 making your decision in this case.

23 If we look at this timeline, it goes --
24 the application of when the patent was filed in 1995, I
25 told you it was issued at the very end of 1996. And

1 then if you look in 1997 and '98, we have LD, which is
2 LaserDynamics, the Plaintiff in this case, entering into
3 many license agreements with those that came to them and
4 said I want to use your technology; I want to sell
5 products into the United States; I will pay you money
6 for a license.

7 The reason why this timeline is going to
8 be critical to you, again, is because of the drastically
9 changing market. As you see, most of these agreements
10 are before 2000/2001.

11 After this time period, the market takes
12 off and DVDs become the number one market for movies.
13 If you'll all recall, back in the '90s, if we went to
14 Blockbuster to rent a movie, we watched it on VHS.
15 That's what they had at that point in time.

16 Starting sometime in the early 2002/2003
17 time period, you go to a Blockbuster, you can't find a
18 VHS. They're all on DVDs. It became the market.
19 I think that you'll hear one of the Defendants that --
20 the one that manufactures the drive, Quanta Storage,
21 I'll refer to them sometimes as QSI, didn't even start
22 as a company until 1999. They don't start making these
23 disks until 2001 and 2002, after we're on the up ramp of
24 this becoming the technology.

25 I think that you will hear evidence that

1 sometime in this time range, 2003, Mr. Kamatani actually
2 had or his lawyer had conversations with the company
3 that makes the drives, QSI, Quanta Storage, to ask them
4 if they were interested in a license.

5 They said they weren't. Mr. Kamatani is
6 going to testify that they never talked about numbers,
7 because he first said are you interested in a license
8 and they said no, we're not. So they never got to -- to
9 the point of discussing numbers one way or the other.
10 During this infancy stage, '97 to 2000, this stage that
11 I'm going to refer to as the infancy, during that period
12 of time, many companies again entered into license
13 agreements with Mr. Kamatani. But let's look at what
14 people knew during that time period or what these
15 companies knew.

16 You didn't know whether the technology
17 would catch on. You didn't know whether or not VHS
18 would remain the technology or not. There -- there
19 weren't even multiple format disks in existence at the
20 time. There were other technologies that competed with
21 DVD that never ended up making it. There was a lot of
22 competition, and no one knew which one would be chosen.

23 Mr. Kamatani, just out of college at MIT,
24 just starting to file for patent applications and obtain
25 applications, was brand-new in business. He was just

1 getting started in his business career. Many of the
2 companies that got licenses here never ended up in the
3 business, never made a single drive, never sold
4 anything, yet they paid and got a license just in case
5 they decided to get into that business.

6 Was Mr. Kamatani, during this '97 to 2000
7 time period, willing to accept very modest amounts for
8 these licenses?

9 Absolutely. There was a lot of risk.
10 There was a lot of unknown about what the industry would
11 do.

12 In the late 1990s, and specifically in
13 1999, Mr. Kamatani's licensing strategy began to change,
14 because now you're starting to see the market pick up.
15 You're starting to see companies make movies on DVD
16 instead of VHS. Everyone is starting to figure out that
17 this may be the next chosen technology.

18 You will see evidence of Mr. Kamatani's
19 licensing strategy change. You'll see a letter from one
20 of his lawyers to a company in late 19 -- or in mid-1999
21 asking them if they want a license, and at the end of
22 the letter it says: You have two months to accept this
23 offer for a license, at which time it's withdrawn, and
24 we're not going to offer it to you anymore.

25 You have another one of those lawyers,

1 and you'll hear this name; he has a lawyer in Japan, a
2 Japanese lawyer by the name of Hagihara. He's a patent
3 lawyer.

4 Mr. Hagihara sent a letter out to a
5 company in 1999 that says we're going to make an offer
6 to you where you can pay a lump sum, a one-time payment,
7 for a license. You've got two weeks to accept it. And
8 at the end of that two weeks, we're no longer going to
9 offer you a license for a lump sum.

10 If you want a license, then it's going to
11 be on what is called a running royalty, which means for
12 every single drive you make, you're going to have to pay
13 us an amount. It may be \$2.50; it may be \$5, but we're
14 only going to do it based on a running royalty.

15 And so however many you're selling into
16 the United States, if you sell this for 50 bucks in the
17 United States, I want five bucks, because you're using
18 my technology.

19 Those letters, you will see, show that
20 his licensing strategy began to change right around
21 1999, which is why I say that this timeline is going to
22 be critical at the end of the case when you're making
23 your decision.

24 By the time the Defendants start making
25 optical disk drives and by the time they start selling

1 them or shipping them into the United States, by the
2 time Mr. Kamatani accuses them of using his technology
3 of infringing, the landscape had changed dramatically.

4 We're now all the way over here into the
5 summer of 2006. The world knew by this point that this
6 was the chosen technology for the future. VHS was gone.
7 When you went to Blockbuster's, all you could get were
8 DVDs. All of the technology companies had decided to
9 get into this business, because they all saw the huge
10 market and thus the ability to make billions of dollars.
11 Mr. Kamatani now had a much better bargaining position.
12 He had a patent that was much more valuable than it was
13 when it was first issued, and he also had the ability to
14 enforce his patent to the extent companies decided they
15 didn't want a license, that they were just going to
16 ship -- ship and sell into the United States without
17 permission to do so.

18 So, again, I want you to keep your eye on
19 this timeline throughout the trial. The Defendants,
20 when they put their witnesses on the stand, I expect
21 them, and when they cross-examine Mr. Kamatani, I expect
22 them to focus on '97 to 2000.

23 It's all about a plea to you to let them
24 off the hook cheap for their infringement. You can't
25 ignore the reality of what happened in the market and

1 how different the market is in 2006 than it was in
2 1997/1998. I don't think that you're going to buy into
3 that.

4 Let me turn the tables for a minute and
5 talk about some of the agreements that the Defendants
6 agreed to enter into and monies they agreed to pay other
7 companies, after the market took off and everybody knew
8 it was going to be successful.

9 Wendy, could you pull up the royalty and
10 other agreements that the Quanta Defendants entered
11 into?

12 While she's working on that, let me talk
13 to you about that for just a second. These are
14 agreements that the Defendants willingly entered into
15 within the last five years. You can see the dates of
16 them. And when we have a witness on the stand, we're
17 going to talk about what some of those agreements were
18 and the amounts that they agreed to pay other people.

19 These are amounts that they agreed to pay
20 these companies, but, remember, these are amounts they
21 refused to pay Mr. Kamatani and LaserDynamics.

22 [REDACTED]
23 [REDACTED]
24 **REDACTED BY ORDER OF THE COURT**
25 [REDACTED]

1 [REDACTED]
2 [REDACTED] | [REDACTED]
3 [REDACTED] **REDACTED BY ORDER OF THE COURT** [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Again, they willingly entered into these
16 agreements to pay these companies the money, primarily
17 because of the amount that they could make by selling
18 these into the United States. And you'll see the
19 evidence of the money that they made.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] **REDACTED BY ORDER OF THE COURT** [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10 testimony and you hear their pleas in this case, they're
11 going to be asking you to make the damages very low and
12 not to give LaserDynamics very much money, because --
13 and I'll get to this in a second -- as they said during
14 jury selection, the technology, as they put it -- let me
15 find the exact word that was used -- is becoming a less
16 important -- technology is not becoming less important.

17 I mention all these agreements that the
18 Defendants willingly entered into in this case, because
19 you're going to decide the damages at the end of the
20 case. You will be given specific instructions from
21 Judge Ward on what to consider. You'll hear expert
22 testimony from an expert that has considered many
23 factors, and he'll give you his opinion on what the
24 figures should be.

25 You're going to hear throughout this case

1 from these expert on what's called the hypothetical
2 negotiation.

3 THE COURT: You have five minutes.

4 MR. SANKEY: Yes, sir.

5 The Court will instruct you to consider a
6 hypothetical negotiation as if Mr. Kamatani and
7 LaserDynamics and these Defendants sat down in 2006 and
8 negotiated an agreement. Remember the timeline. We're
9 in 2006 now.

10 This expert, Mr. Murtha, who you will
11 hear from, worked for IBM for 34 years. For 28 of those
12 years, he was in charge of negotiating license
13 agreements; that was his job. He negotiated with
14 Chinese companies; he negotiated with Taiwanese
15 companies.

16 With respect to infringement in this
17 case, you will also hear from an expert, Dr. Howe.
18 Dr. Howe is from the University of Arizona. He has a
19 Ph.D. in optics. Dr. Howe is going to testify to you
20 that in his opinion their products infringe and use
21 Claim 3 of this patent.

22 Their own expert that's going to testify
23 about the technology, we've taken his deposition; we've
24 seen his report. I believe he's going to tell you that
25 he doesn't know how their products operate.

1 As Judge Ward told you, which witnesses
2 do you believe the credibility of?

3 Finally, let me talk to you about induced
4 infringement and contributory infringement, because to
5 infringe this patent, you have to use the method. You
6 have to stick a disk in the drive. It has to figure out
7 which it is and start playing the disk.

8 These Defendants over in China and over
9 in Taiwan, they're not the ones directly infringing.
10 They sell their products to Dell, who then sell the
11 products to you and me. And when we stick a disk in
12 there and it figures out which one it is and starts
13 playing it, that's direct infringement.

14 The claim against them is that they're
15 contributing to that; they're inducing that by selling
16 the product to Dell and by encouraging that inducement
17 by the end-user, because by using that disk, they're
18 able to then sell more.

19 You will hear numbers that for the last
20 two years, from the time we filed this lawsuit through

21 **REDACTED BY ORDER OF THE COURT**
22 these products into the United States. Yet they don't
23 want to compensate Mr. Kamatani for his technology.

24 As jurors, that is your job to make them
25 responsible for their actions and to make them pay what

1 is due in this case.

2 Again, I thank you for your time. Look
3 forward to putting on our evidence to you. Wait until
4 you hear all the evidence before you make a decision.
5 And we will get this case to you to make that decision
6 just as quickly as we can.

7 Thank you.

8 THE COURT: Thank you, Mr. Sankey.

9 Mr. Parker?

10 MR. PARKER: Yes, sir. Thank you.

11 May it please the Court.

12 Ladies and Gentlemen of the Jury, I too,
13 on behalf of the Defendants, thank you for the time and
14 attention that you're going to spend here and appreciate
15 your jury service.

16 As was explained to you, I think, by the
17 Court when you first came to be selected for the jury in
18 this case, sometimes business people have disputes that
19 they can't resolve.

20 And when they ultimately can't resolve
21 them, the only way we can get them resolved is by asking
22 citizens like you to come in and sit in this courtroom
23 and help us resolve them, decide the facts of the case
24 as they are presented to you, based on the evidence that
25 you hear.

1 To be fair to everybody, whether they are
2 big or small, individual or corporation, to look at the
3 evidence fairly, evenly, and in a balanced manner and
4 make a decision.

5 And we appreciate that, and I'm confident
6 that the Plaintiffs, Mr. Kamatani, also appreciates your
7 time, your attention and your being here and helping us
8 resolve this dispute.

9 Now, I introduced the people that will be
10 involved on my side of the case when we had jury
11 selection, but it's been a while, and I'd like to
12 introduce them again.

13 With me are some attorneys that will be
14 involved in presenting this case along with me.

15 One is Mr. Christian Platt, who is my
16 colleague with the Paul Hastings Law Firm. He's in San
17 Diego.

18 Another is Ms. Katherine Murray, also a
19 colleague of mine from the Paul Hastings Law Firm.
20 She's in Los Angeles.

21 With me, that will be in and out of the
22 courtroom as the proceedings go along is Ms. Ericka
23 Schulz, another attorney from the San Diego office.
24 Also with us, Mr. Trip Wilcox. He's with his own firm
25 over in Tyler, Texas, and he'll be involved in assisting

1 with and helping with the defense of this case.

2 Also, some people you'll see in the
3 courtroom are two paralegals that will be helping us,
4 Denise Lobodinski and Katie Ringel.

5 And then finally, and most importantly
6 actually, there are two representatives of our
7 respective clients here today, and they will be here
8 throughout this trial.

9 For Quanta Storage, Inc., is Mr. Kevin
10 Cheng, and for Quanta Computer, Inc., is Ms. Tracy Li.
11 They are both from Taiwan, and that's where QSI and
12 Quanta Computer are headquartered. You'll get a chance
13 to get better acquainted with them later when they
14 appear as witnesses in the case.

15 Now, for some of the testimony of
16 witnesses that are associated with QSI and Quanta
17 Computer, we will be using an interpreter, and I wanted
18 to explain that to you in advance, because I know it's
19 difficult enough to listen to testimony and to sit here
20 and be involved in business when you'd rather be doing
21 something else, and it will even be more tedious when
22 the testimony has to be translated or interpreted by an
23 individual.

24 But in order for our witnesses to fully
25 understand and to be able to fairly and completely

1 answer the questions, there are times when an
2 interpreter will have to be used.

3 Now, Ms. Li is going to attempt to offer
4 most of her testimony in English, but there may be times
5 when she will need help from the interpreter. And she
6 will signal when she needs help from the interpreter,
7 because even though she speaks English quite well and
8 certainly speaks it a lot better than I speak Mandarin,
9 she still may need help because Mandarin Chinese is her
10 native tongue.

11 Now, the parties in this case. You've
12 already heard something about them. Quanta Storage,
13 Inc., sometimes referred to as QSI, they are a Taiwanese
14 corporation.

15 They are publicly traded on the Taiwan
16 stock exchange, and they manufacture what are referred
17 to as optical disk drives, which are suitable for
18 playback and recording of various types of optical
19 disks, which are more commonly referred to as CDs or
20 DVDs.

21 And we're all familiar with them. You
22 were shown a couple of them by Mr. Sankey during his
23 opening.

24 Quanta Computer, Inc., is also a
25 Taiwanese corporation, but they're an entirely different

1 business. They assemble various types of equipment,
2 including laptop computers, but they also assemble iPod
3 touches and other things.

4 You'll learn that they are an assembler
5 of electronic equipment for various brand names that are
6 sold throughout the world. They are what's called an
7 original equipment manufacturer, which means they are
8 the people -- or the company that have people that
9 really build things that are on an assembly line with
10 soldering guns, with other pieces of equipment, and they
11 actually build things and put them together.

12 And you will learn that you will -- you
13 cannot go to Wal-Mart and you can't go to Best Buy and
14 buy something that has the Quanta name on it.

15 Why? Because the names that will be on
16 these electronic products that are assembled by Quanta
17 Computer are names like Apple, Lenovo, which was
18 formally IBM, Dell, Hewlett-Packard, Toshiba, and
19 others.

20 Now, we expect that the Plaintiffs,
21 throughout this trial, will try to lump QSI and Quanta
22 Computer together, but you're going to learn that they
23 are two completely separate companies.

24 The same individual is the Chairman of
25 the Board of both companies, and Quanta Computer owns 30

1 percent of Quanta -- of QSI.

2 So is there some relationship between the
3 two companies? There definitely is, and we acknowledge
4 that.

5 But they are separately trained --
6 separately traded, separately managed entities on the
7 Taiwan stock exchange. Completely separate controls, in
8 terms of management of the two corporations. Their
9 books are kept separately. Everything is kept
10 separately with respect to the two companies.

11 And in fact, if you looked it up -- and
12 you're not -- don't -- I'm not suggesting you do this,
13 because you're not supposed to do that -- the Quanta
14 name in Taiwan, it would be sort of like the word
15 general in the United States.

16 There are companies General Tire, General
17 Motors, General Dynamics, but they aren't related. They
18 don't have anything to do with each other.

19 These companies are related, but they are
20 separate, stand-alone entities that have their own
21 listings on the Taiwanese stock exchange.

22 Now, LaserDynamics is a Japanese
23 corporation, which does not make anything, no product of
24 any kind, no optical disk drives.

25 Never has made even one optical disk

1 drive and never has even written any software to sell
2 into the marketplace that explains how optical disk
3 drives work or that assist optical disk drives in
4 operating. Don't sell anything, either tangible or
5 intangible.

6 Now, Mr. Kamatani is the sole owner and
7 employee of LaserDynamics, and he has never -- you'll
8 find out he's never built an optical disk drive, not
9 even one, not even one prototype to show what his
10 claimed invention does or doesn't do.

11 And that he's also never written a single
12 line of computer code to enable the operation of an
13 optical disk drive or anything else for that matter.
14 LaserDynamics's sole business is the licensing of
15 various patents owned by it. And I think the evidence
16 is going to reflect, perhaps unlike what you heard in
17 Plaintiff's opening statement that the world did not
18 beat a door -- did not beat a path to LaserDynamics's
19 door or to Mr. Kamatani's door. He beat a path to them
20 in trying to hawk his licensing.

21 And some companies decided it was easier
22 to buy it than fight about it. And so he did sell a
23 number of licenses. You'll learn that their sole
24 business is licensing the '981 patent and a number of
25 other patents.

1 Now, LaserDynamics accuses QSI and Quanta
2 Computer of infringing Claim 3 of LaserDynamics'
3 patents. And we believe ultimately they will not be
4 able to carry that burden of proof even -- even by a
5 feather.

6 And I'm going to explain to you in a
7 minute why we -- why we think that is the case based on
8 how the evidence is going to come in.

9 But, first of all, I wanted to comment on
10 the timeline that you were shown and how we think you
11 should pay attention to the timeline, too, but we think
12 it demonstrates some different things.

13 What you're going to learn from the
14 evidence in this case is that the price for this product
15 peaked in the '01, '02 timeframe.

16 And you will have evidence before you
17 that shows that early on in the sale of these disks,
18 particularly the DVDs when the DVD technology took on,
19 Quanta Storage, Inc., QSI was selling these things for

20 [REDACTED]
21 [REDACTED]

22 [REDACTED] **REDACTED BY ORDER OF THE COURT**

23 [REDACTED]
24 [REDACTED]

25 And why is that?

1 Well, first, it's competition, which is a
2 good thing.

3 Another is, the technology has developed
4 and assembly has gotten more efficient.

5 But the last one is, just like happened
6 with the VHS, this is passing, too. And some of you may
7 already see that.

8 You can now go online with your desktop
9 or laptop computer and download a movie and look at it
10 on your TV, put it on a flash drive and look at it on
11 your TV, if you have the technology.

12 And in a year or more, everybody's going
13 to have it, or a majority of the market is going to have
14 it, and we're going to be in the same situation we were
15 with VHS morphing into DVD. DVD is going to morph into
16 solid state electronics, because it's smaller, it's more
17 convenient, and it's higher quality. And it's just the
18 way technology develops in the marketplace.

19 So we're not at the peak. We're past the
20 peak, and we're on the downhill slide on this
21 technology. And as much as they're going to try to
22 argue that we're at some point in time when the damages
23 should be astronomical, if you should find infringement,
24 which we don't think you will, that's just not the case.
25 And your common sense will tell you that.

1 Now, there was a meeting in '02 or '03
2 between representatives of QSI and LaserDynamics, and
3 there was some discussion about a license, and there was
4 some follow-up meetings among lawyers, and there was a
5 range of prices discussed, you'll learn. And that range
6 was from, even in that timeframe, between 100 and
7 \$200,000.

8 But QSI decided that -- two things in
9 consultation between their legal department and their
10 technology department, was that they didn't use the
11 technology, and they didn't want to pay for it, even if
12 it was relatively cheap. They decided not to be pushed
13 into buying something they didn't need.

14 Now, you saw in the opening statement a
15 bunch of agreements put up that Quanta had entered into.

16 Well, what does that mean?

17 That means, when somebody comes with real
18 technology, with something that has value, we pay for
19 it. It's not that this company is dodging its
20 obligations to pay.

21 They showed you, when somebody comes with
22 real technology, like Philips -- now, they show you the

23 [REDACTED]

24 [REDACTED]

REDACTED BY ORDER OF THE COURT

25 And other agreements that they showed

1 you, you will learn from the evidence in this case don't
2 even involve patent licenses. They involve agreements
3 to manufacture both for Philips and later for a company
4 called Sony NEC Optiarc. Entirely different, entirely
5 different agreements.

6 Not licensing of technology, but
7 agreements to build things and to be paid for building
8 things and to pay for the opportunity to have the
9 technology to use to build things, technology that's
10 actually valuable and that, as they point out, my client
11 was more than willing to pay for when the value was
12 demonstrated to them.

13 Now, as to infringement, we expect that
14 LaserDynamics will try to meet its burden of proof on
15 that issue by use of an expert, a Mr. -- or rather --
16 I'm sorry -- a Dr. Howe.

17 And we think that as you look at the
18 evidence, that effort will fall short, and it will fall
19 short by more than a feather's worth.

20 And why do I say that? They've already
21 told you -- Mr. Sankey said, and we agree -- there's
22 some things we do agree on. This is a process claim.
23 And in order to demonstrate what a process claim does
24 and to show whether or not the technology that someone
25 else is using actually employs that process claim or

1 implicates that process claim, you will learn that that
2 requires a detailed analysis of the source code, of the
3 source code associated with the implementation of that
4 process. And that is the only way you can determine
5 whether or not there is infringement.

6 And Dr. Howe will admit -- and these
7 are -- I'm borrowing his words -- that the only way to
8 present an in-depth or very precise description of how
9 an ODD operates is through -- is through logical
10 analysis of the firmware source code associated with
11 that drive.

12 That's what he says. That's what you
13 have to do. The only way you can figure out how these
14 things operate and whether or not they use
15 LaserDynamics's technology is to conduct a detailed
16 analysis of the source code of that drive.

17 Now, you will learn that there are 20
18 so-called accused drives in this case. And you will
19 learn that Dr. Howe did do a detailed source code
20 analysis of two drives.

21 Well, what you'll also learn is, neither
22 of those drives is one of the 20 accused drives in this
23 case. They are both drives manufactured by a company
24 called ASUS that used to be in the case but isn't around
25 anymore. And it has no relationship whatever with

1 Quanta, not at all.

2 By his own admission, Dr. Howe did only a
3 cursory, cursory or limited -- those are two words he
4 used and that he will have to use again, because we'll
5 point them out to him -- analysis of the source code of
6 three of QSI's drives but not the detailed analysis that
7 he himself says you have to do in order to truly analyze
8 this process claim and to come to a scientific
9 conclusion about whether or not the accused instrument
10 actually infringes the patent.

11 The burden won't be carried. It won't
12 even come close.

13 As you hear the evidence in this case,
14 think about it. Pay attention to it. Wait for Dr. Howe
15 to explain to you a detailed analysis that he's done on
16 even one QSI-manufactured drive.

17 He won't do it, because he can't do it,
18 because he hasn't done it. And that's what they have to
19 do to carry their burden.

20 Now, we think, as the evidence unfolds,
21 you'll not need to consider damages. We think, when you
22 go back to the jury room, you will decide the case on
23 infringement, and that's as far as you'll need to go.

24 But I'm going to discuss other issues in
25 the case, including damages, with you briefly in this

1 opening statement.

2 As I said earlier, QCI, Quanta Computer,
3 assembles electronic devices, including laptop
4 computers, all bearing the name of some major brand that
5 markets and sells the actual products.

6 You'll learn that nearly every component
7 in a laptop that eventually goes to the market with the
8 name of this brand-holder, every single major component
9 is bought by the brand-holder and sold to Quanta
10 Computer.

11 It's chosen by the brand-holder and sold
12 to Quanta Computer, and Quanta Computer just assembles
13 these various component parts into the particular brand
14 name, sells the assembled product back to the brand
15 seller that the cost of the components, including the
16 CPU, the keyboard, the optical disk drive, is a straight
17 pass through back to the brand-holder.

18 No markup on it. No profit on it at all.
19 Made by Quanta Computer. And the only way they make
20 their money is a fee they charge to the brand-holder for
21 assembling the finished product, the computer.

22 So it's not Quanta Computer who decides
23 which optical disk drive or CPU or keyboard or anything
24 else in these computers to buy and put in it; it's Dell,
25 Hewlett-Packard, Apple.

1 In fact, they don't only decide it; in
2 most cases, they buy it and then sell it to Quanta
3 Computer to assemble into the finished product.

4 Now, why do they do it this way? Because
5 those brand-holders are the ones that have the market
6 power. They can go into the marketplace and shop for
7 the part we're talking about here, an optical disk
8 drive, and they can look at QSI or TEAC or any one of a
9 number of different potential suppliers, and they can
10 negotiate the lowest price.

11 And they may buy a thousand from QSI and
12 give 300 of them to QCI -- or sell 300 to QCI, sell 300
13 to Compal, which is another OEM manufacturer, sell 300
14 to another OEM manufacturer. They make that decision,
15 and you'll learn that about how this business works.

16 And why is this important? This exercise
17 of market power by the brand-holders here, by the Dells
18 and the Hewlett-Packards and the Apples of the world.
19 Well, what you'll learn is, while they want to talk to
20 you about millions of dollars, even billions of dollars
21 of sales, you will learn that the margin in this
22 industry for OEM manufacturers is razor thin, because
23 they are not the entity that has the market power. They
24 are not the Dell, the Apple, the Hewlett-Packard.

25 And what the evidence will show is that

1 the margin, the profit margin in this industry is in a 2
2 to 4 percent range.

3 And why is that important? Because that
4 will demonstrate how unrealistic Mr. Murtha, their
5 expert's testimony is with respect to what a royalty
6 should be.

7 He wants a 2 percent royalty on every

8 [REDACTED]

9 [REDACTED] **REDACTED BY ORDER OF THE COURT**

10 [REDACTED]

11 And you will learn that there are various
12 factors to take into account in deciding what a
13 reasonable royalty is.

14 And one of those factors is the profit
15 and the business reality related to the transaction and
16 that under no circumstances could a royalty that
17 completely eliminates the profit in the transaction ever
18 be reasonable or even approach reasonable.

19 And we will bring an expert to you,
20 Mr. Reed, who will testify that even if you were talking
21 about a running royalty rate as an appropriate approach
22 in this case -- and I'm going to explain to you in a
23 minute why we don't think the evidence will demonstrate
24 that it is -- even if that were appropriate and even if
25 you were forced to do that, even though these people

1 have never done it, that the -- the appropriate royalty
2 would be miniscule compared to what they're claiming,
3 that it would be a fraction of the 2 percent that
4 they're claiming.

5 Now, the patent at issue here was issued
6 in 1996. That's some 13 years ago. During that time
7 period, you will learn, as the evidence comes out in
8 this case, that there were 16 arm's-length negotiated
9 license agreements that have been entered into covering
10 this patent. They'll be in evidence. Not one single
11 one of them has a running rate royalty in it.

12 Now, remember, Mr. Sankey told you in
13 opening, they established a policy in 1999 that we're
14 going to start having running rate royalties.

15 Well, I don't know what their policy was,
16 but their practice was they never, ever entered into one
17 single running rate royalty agreement. They won't have
18 one to show you.

19 That's why they have to show you a letter
20 that says, Hey, we'd like to start doing this, or their
21 expert will say, I talked to Mr. Kamatani, and he said,
22 Gee, I really would like to do that.

23 Well, the proof is in the pudding, and
24 the proof that you will see is, they've never, ever done
25 it. Why? Because no one that they approached was

1 willing to do it with them.

2 Now, all of these lump-sum license
3 agreements have a range of between \$50,000 on the low
4 end and \$233,000 on the top end.

5 THE COURT: You have five minutes.

6 MR. PARKER: Yes, sir.

7 And these were for multiple patents, not
8 just the '981 patent in most cases, and they granted
9 worldwide, unlimited, life-of-the-patent licenses
10 complete for a one-time, one-off payment.

11 The licenses were granted again, and you
12 will have them in evidence, and they were granted to
13 some of the biggest and most well-known companies in the
14 world, like Sony.

15 You see there, the Sony Corp. And how
16 much was it? \$84,000.

17 NEC, lump-sum amount, \$84,000. And then
18 there's some tax added on to it.

19 Philips, \$120,000, one of the biggest
20 ones. And there were others as well.

21 And you'll learn that the method that
22 they used, the real method that they used -- not what
23 their plan was, the real method that they used -- and
24 this will come out in the evidence in the case -- was
25 that when they went out to license the product, their

1 target was to get 200,000 from big companies, 100,000
2 from midsized companies, and 50,000 from small
3 companies.

4 And in the face of all this, not a single
5 deal with an ongoing royalty and not a single deal over
6 \$233,000, even at the point where these disks were
7 selling at the top, the top price they ever sold at,
8 about 80 bucks apiece, the most they got as a license
9 was \$233,000.

10 MR. SANKEY: Your Honor?

11 MR. PARKER: But they're going to ask --

12 THE COURT: Wait. What?

13 MR. SANKEY: I have an objection. Can we
14 approach the bench?

15 THE COURT: Okay.

16 (Bench conference.)

17 MR. SANKEY: Your Honor, we have a
18 representation to the Court that the most Mr. Kamatani
19 has ever gotten is 233, completely ignoring all of
20 the --

21 THE COURT: Well, this is opening
22 statement. You can point that out and how wrong he was
23 and how he misrepresented it.

24 MR. PARKER: The only ones that were,
25 Your Honor, were the ones that have been excluded

1 because litigation was involved. And we've already been
2 over this with Judge Everingham.

3 THE COURT: Well, no, wait a minute,
4 Counsel. Judge Everingham and I are consistent about
5 one thing.

6 MR. PARKER: Yes, sir.

7 THE COURT: And that is, if you know
8 about something, you do not represent to the jury that
9 there are none.

10 Now, you can say there's none outside of
11 litigation.

12 MR. PARKER: Yeah. Well, when I started
13 this, I said negotiated agreements, and I meant to hold
14 to that.

15 THE COURT: Well, I think you went a
16 little further than that, so you might want to clear
17 that up.

18 MR. PARKER: I will. I will.

19 THE COURT: Okay. Thank you.

20 (Bench conference concluded.)

21 MR. PARKER: I think I said this when I
22 started this discussion. I said there's 16 negotiated
23 arm's-length agreements that have been entered into
24 during the life of this patent that you'll see in
25 evidence in this case, and that's what I'm talking about

1 in this opening statement, those 16 arm's-length
2 negotiated agreements and not anything else in terms of
3 any licensing.

4 Now, having heard this, the 16 negotiated
5 arm's-length agreements, with a maximum being \$233,000,
6 we expect, ultimately, that the Plaintiffs are going to
7 ask you to consider damages of millions.

8 One thing that we also agree with
9 Plaintiffs on and that the Court said to you at the
10 beginning here, don't park your common sense at the
11 courthouse door.

12 They've never sold it for millions.
13 They've never even sold it for 1 million. They've never
14 even sold it for half a million.

15 So even if you get past infringement,
16 which we don't think you will, employ your common sense
17 and determine that the range we're discussing here is a
18 range within 50 to \$233,000. And that's all we're here
19 talking about.

20 Thank you.

21 THE COURT: All right. Thank you,
22 Mr. Parker.

23 Ladies and Gentlemen, before we start the
24 evidence, we'll take a morning break. Be ready to come
25 back in the courtroom at 10:15. I'll see you back at

1 10:15. Follow Mr. McAteer.

2 (Jury out.)

3 THE COURT: All right. Be seated,
4 please.

5 We have both -- been tendered to the
6 courtroom deputy, Ms. Dupree, both exhibit lists of --
7 y'all have exchanged those, I take it?

8 MR. PARKER: Yes, sir.

9 MR. SANKEY: We have.

10 THE COURT: All right. You believe they
11 accurately represent the rulings of admissions and
12 refusals?

13 MR. SANKEY: We believe they do, yes,
14 sir.

15 THE COURT: Okay. Those exhibits on each
16 of the respective party's lists are deemed admitted and
17 may be referred to without further foundation. Any
18 questions you wish to ask to place some context, that's
19 strictly up to you.

20 Second thing, I don't believe that you've
21 tendered to the Clerk the exhibits for the Defendant.

22 You need to get those, so she can mark
23 them during the course of the trial.

24 MR. WILCOX: That's correct, Your Honor.
25 They're right here. We're going to do that at the

1 first --

2 THE COURT: Well, that's what I said.
3 Just get them up here. That's all I'm asking you to do.
4 That's all I need from you. I'll see you back here at
5 10:15.

6 MR. SANKEY: Your Honor, if I could, one
7 point, something we filed this morning, but Judge
8 Everingham, obviously, ruled on the limines. The Court
9 reaffirmed that on the reconsideration.

10 He then ruled on the exhibits, but we
11 would like, for the record, for the Court to affirm his
12 ruling with respect to allowing in all of the prior
13 license agreements, which we object to.

14 We understand they're in, and they're
15 coming in, but we would like, I guess, during the
16 course --

17 THE COURT: That was a definitive ruling.
18 The Court's, you know -- I overrule your objection, the
19 Plaintiff's objection to all those prior licenses.

20 Now then, I don't know what else you need
21 to preserve the record, but I'm overruling that
22 objection as stated to Judge Everingham.

23 Do you need something else?

24 MR. SANKEY: That's all I needed, Your
25 Honor.

1 THE COURT: Okay.

2 MR. SANKEY: Thank you.

3 COURT SECURITY OFFICER: All rise.

4 (Recess.)

5 COURT SECURITY OFFICER: All rise.

6 (Jury in.)

7 THE COURT: Please be seated.

8 All right. Mr. Sankey, who will be your
9 first witness?

10 MR. SANKEY: Your Honor, LaserDynamics
11 would call Mr. Kamatani.

12 THE COURT: All right. Come around and
13 be sworn.

14 (Witness sworn.)

15 YASUO KAMATANI, PLAINTIFF'S WITNESS, SWORN

16 DIRECT EXAMINATION

17 BY MR. SANKEY:

18 Q. Would you introduce yourself to the jury,
19 please, sir.

20 A. My name is Yasuo Kamatani.

21 Q. Mr. Kamatani, how old are you?

22 A. I'm 39 years old.

23 Q. And tell the jury where you live.

24 A. I live in Tokyo.

25 Q. Is that where you grew up?

1 A. No. Actually, I grew up next to Tokyo. It is
2 Kanagawa, K-A-N-A-G-A-W-A.

3 Q. And tell the jury just a little bit of
4 something about yourself. Tell me about your family.

5 A. Well, I have parents, of course, who are in
6 good health, and I have a brother five years older than
7 me.

8 Q. Did you attend high school in Japan?

9 A. Yes, I did.

10 Q. After high school, did you make a decision to
11 come to the United States to go to college?

12 A. That's right. After I finished high school in
13 Japan, I start working at the restaurant and save some
14 money to come to United States for college education.

15 Q. And what did you do at this restaurant; what
16 was your job?

17 A. Well, I was basically washing dishes and
18 served the dinner, lunch to the customers. That was my
19 job.

20 Q. Tell us -- tell the jury why you made a
21 decision to go to college in the United States.

22 A. Well, like I said, I have a brother five years
23 older than me, and he went to very best college in -- in
24 Japan. It's called University of Tokyo.

25 So we are brothers, so kind of -- I didn't

1 want to be his shadow, so to speak, so I didn't want to
2 do the same thing like my brother did. So I decided to
3 come to the United States and study here.

4 Q. Now, working as a waiter and dishwasher, did
5 you have the money to go to college in the United
6 States?

7 A. No, I did not.

8 Q. How did you get the money?

9 A. Of course, I worked for the restaurant and
10 saved some money. Of course, it wasn't enough to study
11 in this country. So I did ask the parents. I did ask
12 to my grandmother for the support.

13 Q. So your grandmother, did she pay for your
14 college?

15 A. My grandmother decided to pay for my tuition.

16 Q. Now, what year did you come to the United
17 States?

18 A. 19 -- 1990 when I was 20 years old.

19 Q. At the time that you came to the United
20 States, did you speak English?

21 A. No, I did not.

22 Q. And where did you first enter college in the
23 United States?

24 A. First, I entered college called Edinboro
25 College in Pennsylvania.

1 Q. And how long did you attend Edinboro?

2 A. Three years.

3 Q. What were some of the things that you studied
4 at Edinboro?

5 A. Well, I took some -- which is called
6 pre-engineering school, pre-engineering course to study
7 the very basic mathematics, physics, you know, that you
8 study the best engineering program.

9 Q. At some point in time, did you learn about
10 another school that you wanted to go to?

11 A. Yes. I decided to transfer to MIT,
12 Massachusetts Institute of Technology.

13 Q. Did you apply and were you accepted at MIT?

14 A. That's right.

15 Q. Why did you want to go to MIT?

16 A. Well, that was my impression, that the MIT is
17 the very best engineering school in the whole world.

18 Q. How long -- let me go back to Edinboro
19 College. How long did you attend there?

20 A. Three years.

21 Q. And once you got to MIT, how long did you
22 attend there?

23 A. I was there for two years.

24 Q. Did you obtain a degree from MIT?

25 A. No, I did not.

1 Q. Why did you leave MIT after two years?

2 A. Well, like I said, my grandmother was
3 supporting for my tuition and, of course, I spend all of
4 my savings after I made some money working for the
5 restaurant. My mother got disease, which is an
6 Alzheimer's disease, so I decided that I could not ask
7 further support to my grandmother, who had sick.

8 Q. And at that point in time, did you return to
9 Japan?

10 A. That's right.

11 Q. From that point out, returning to Japan for --
12 describe the business that you have been in.

13 A. Well, after I went back to Japan, of course, I
14 started looking for a job and start working for the game
15 company. And my job was kind of inspecting the software
16 of the game and checking that their software works fine.
17 That was my job.

18 Q. And as I understand it, at some point in time,
19 you incorporated a company and you called it
20 LaserDynamics?

21 A. That's right.

22 Q. Now, how many -- you have more than just the
23 '981 patent, correct?

24 A. Well, I have 15 patents so far.

25 Q. And, generally, what are -- what is the

1 technology that the U.S. government has issued you
2 patents for?

3 A. Well, most of my patent technology is
4 according to optical disk technology and some display
5 technology and also some communication system I have the
6 patent on.

7 Q. Now, about how many license -- or how many
8 companies have licensed your technology in your patents?

9 A. Well, I do think it's 27 companies so far, 27
10 agreements so far.

11 Q. And so when Mr. Parker talks about there being
12 16 agreements, you actually had more than that, correct?

13 A. That's right.

14 Q. Tell us a little bit about how you learned
15 about U.S. patents.

16 A. Well, that's when I was in -- when I was
17 studying at MIT, of course, there is a lot of professors
18 who owns the patent after they succeed on the research,
19 but applied for a patent to protect their own
20 intellectual property, to protect their idea.

21 And also there is a lot of graduate students
22 who is doing research, and they are always thinking, do
23 I apply the patent once they come up with a new idea or
24 new technology.

25 Q. Did any of those professors or graduate

1 students give you any advice on how to obtain a patent?

2 A. Of course, I ask very general question about
3 what the patent is or how it's going to work.

4 Q. How did you eventually learn the mechanics of
5 how to go about applying for and obtaining a patent?

6 A. How I obtain a patent is that I went to the
7 library. I looked for the books which describe how to
8 apply the patent.

9 Q. With respect to the very first -- when was the
10 first time you filed a patent application?

11 A. Well, I think my very first application I
12 filed is 19 -- 1994, I believe.

13 Q. And did you have the assistance of an attorney
14 at the time you did that?

15 A. Of course. Yes, I did.

16 Q. With respect to the '981 patent, which -- in
17 that line of that 15 that you have, which -- where does
18 this fall in line? Is this your second, third, fourth?

19 A. Well, I believe it's my third or fourth
20 application, and my fourth patent I obtained.

21 Q. When you filed, with respect to the '981
22 patent, did you have the assistance of an attorney for
23 that one?

24 A. No, I did not have.

25 Q. Can you tell the jury why it is that you

1 wanted a patent on the technology that's disclosed in
2 the '981?

3 A. Well, basically, that's my reason. I didn't
4 have enough money to hire a patent attorney to apply the
5 patent.

6 Q. Because this is going to be relevant to your
7 technology, tell the jury what a couple of your hobbies
8 are.

9 A. Well, my hobby is fishing and listening to the
10 music.

11 Q. Okay. Now, when you grew up, you listened to
12 music. On what format was that music?

13 A. Well, when I was -- when I was a kid, I used
14 to have so-called record, which is like donut sort of
15 shape, and I used to have tape, and I had the CD. Now,
16 I have iPod, too.

17 Q. And now starting when you had -- when you were
18 growing up as a kid and you said you had records, did
19 you have a large collection of records?

20 A. Yes, I did.

21 Q. All right. What ultimately had happened to
22 that collection of records?

23 A. Well, it turned to be obsolete. I cannot play
24 it anymore, because that's old technology, and it's
25 better to find the replacement of the needle thing to

1 play the record. It's broken and I cannot find it. I
2 cannot find a replacement anymore.

3 Q. So once your record collection was obsolete,
4 did you then begin collecting music on CDs?

5 A. That's right.

6 Q. In addition to having music on your CDs, did
7 you have any other data on those CDs?

8 A. Well, of course, that besides music, I store
9 pictures of -- family pictures in a CD-ROM or a lot of
10 data is in a CD-ROM, too.

11 Q. In the mid-'90s, did you learn or hear that
12 there was going to be a potential new standard of
13 optical disk drive?

14 A. That's right. I learned the news that the new
15 standard, which is called DVD, will be out very soon.

16 Q. And did this create any type of problem in
17 your mind that you wanted to solve?

18 A. Of course, as I said, I used to have record
19 player, and I could play a lot of my record collection,
20 but now I cannot play it anymore because I don't have
21 any replacement of some parts. And it turned to be old
22 technology, and I cannot play the -- my record
23 collection anymore.

24 I thought that it's going to -- same thing
25 going to happen to my CD collection. If the new

1 technology comes to the market, I cannot play the old
2 format. I thought it was going to happen the same way
3 for the CD collection.

4 Q. Did you want to invent a technology that would
5 allow you to play a DVD and a CD on the same player?

6 A. That's right. I thought that the -- I wanted
7 to protect my own CD collection. I wanted to play it as
8 long as I live, or just the -- I have enough time to
9 replace all of my data into the DVD or in other new
10 format.

11 I wanted to keep -- you know, I wanted to keep
12 the ability to access to my data or music or family
13 pictures I have in the old format.

14 Q. And would this invention that you are working
15 on allow not only you to save your CD collection but
16 everyone that has CDs?

17 A. Of course. I thought that it was going to be
18 good for all of the consumers. I thought that every --
19 each consumer may have same trouble.

20 Q. Did you have any criteria or understanding of
21 what this invention would need to be or do in order for
22 it to be successful?

23 A. Well, it has to be -- it will be successful,
24 because in order to accomplish the objective is that you
25 just provide the consumer for certain amount of time to

1 replace the data from old format to new format.

2 I thought that those systems will be readily
3 accepted to the consumers.

4 Q. Did you intend it to be a rather simple
5 technology?

6 A. Of course, it has to be very simple and very
7 cheap and doesn't cost a lot to the consumers.

8 Q. In addition, then, to music being one of your
9 hobbies, you said that one of your other was fishing,
10 correct?

11 A. That's right.

12 Q. All right. Now, you have a story to tell the
13 jury, but before we get there, did I ask you about a
14 month ago to put some drawings together for me to
15 illustrate this story?

16 A. That's right. I tried to describe as much as
17 I can. I draw the picture a month ago I believe, yes.

18 MR. SANKEY: Wendy, if you could put up
19 the picture that you (sic) drew.

20 Q. (By Mr. Sankey) Is this the picture that you
21 drew for me?

22 A. Yes, I did. That's my drawing.

23 Q. All right. Tell the jury, just starting off
24 here about your story. And is this now sometime in
25 1995?

1 A. In the spring of 1995. Well, it's in kind of
2 very cold and little shower day. I went to the fishing
3 and, of course, I didn't have any fishing boat myself,
4 so I rent the fishing boat. And at that time, I could
5 borrow the fish-finder and actually was my very first
6 time I did use a fish-finder and --

7 Q. Okay. Let me interrupt you for a second and
8 see if we can go to the next slide that -- or drawing
9 that you did for me.

10 What -- tell the jury what you're depicting
11 here with respect to the fish-finder.

12 A. Basically, the fish-finder was using some kind
13 of echo system energized the sound wave to the bottom
14 and detect the bounced-back sound and measure the
15 distance between a boat and the bottom of the lake and
16 also find what the depths of where the fish is.

17 And that's the very basic -- that's, I think,
18 basically how the fish-finder works.

19 MR. SANKEY: If we can go finally to the
20 third screen.

21 Q. (By Mr. Sankey) With respect to this
22 fish-finder, you say that it sends sound waves down
23 through the water?

24 A. That's right.

25 Q. And they bounce back up and tell you what the

1 bottom looks like?

2 A. It shows that some logs on the bottom. Also,
3 the particular fish-finder couldn't pick up the
4 difference of what the bottom is, mud or sand or log, or
5 even shows the dead trees underneath of the water.

6 So I could realize that your -- this is a way
7 to distinguish the type of disk, same very basic --
8 same -- same principle can be applied to how distinguish
9 how to -- the type of the disk.

10 Q. And so while you're on this fishing trip with
11 the fish-finder, did a lightbulb go off and give you
12 your initial idea?

13 A. Initial idea, yes.

14 Q. Now, when you do your technology -- and we're
15 going to hear a lot of technology about it through the
16 trial -- but do you use sound waves to go down and shoot
17 down onto the disk?

18 A. No. It's -- for the optical disk technology,
19 we use the laser to energize onto the disk and read the
20 data from the disk. We use the laser, not the sound
21 wave.

22 Q. And is that -- the fact that you use a laser
23 to shine onto the disk, is that where the name of your
24 company, LaserDynamics, came from?

25 A. Well, actually, it's not. The name

1 LaserDynamics is named after -- well, it was named by
2 the professor who used to -- my brother used to work
3 with, and he passed away, but he gave me the name of the
4 company. That's LaserDynamics is kind of word of that
5 professor's -- that professor kind of invented. It's a
6 new word.

7 Q. Okay. Let me show you what is Exhibit 1,
8 which is the red-ribbon copy of the '981 patent.

9 Is this the patent that the United States
10 government awarded to you?

11 A. That's right.

12 MR. SANKEY: Now, if we could put up
13 Exhibit No. 3.

14 Q. (By Mr. Sankey) This patent, as I read it,
15 says that it's being issued to the inventor, Yasuo
16 Kamatani. That's yourself, correct?

17 A. That's right.

18 Q. Can you tell us -- Exhibit No. 3 says that
19 it's an assignment to LaserDynamics.

20 Can you tell us what that transaction was that
21 you filed with the Patent Office?

22 A. Well, I assigned the patent to the
23 corporation, which I established, LaserDynamics,
24 Incorporation. I assigned -- basically, I transferred
25 the right of the patent to my company.

1 Q. And that's -- is that why the LaserDynamics is
2 the Plaintiff in this lawsuit?

3 A. That's right.

4 Q. All right. Now, tell the jury why it is to
5 begin with that you incorporated the company,
6 LaserDynamics?

7 A. Well, since I started the licensing business,
8 I made the agreement with some company when I was still
9 the independent inventor, and the company required me to
10 establish the corporation. It's better to negotiate
11 with. It's kind of good to work with the big company.

12 So, actually, some of my licensees recommended
13 me to establish a corporation.

14 Q. Your lawsuit in this case is with respect to
15 just Claim 3 of the patent, correct?

16 A. That's right.

17 Q. Can you tell the jury what it is -- what the
18 invention is in Claim 3 of the patent?

19 A. Claim 3 is how to distinguish or how to
20 discriminate the type of the disk, and you can play more
21 than one type of the disk, CD or DVD, or another new
22 format, and provides you the ability to play even the
23 old format you used to have and protect your -- protect
24 your collection.

25 Q. Is that an important method for an optical

1 disk drive?

2 A. I do believe so. I haven't ever seen any DVD
3 drive that is not using my invention.

4 Q. Now, what I have here and what I've shown is
5 I've got a DVD and I've got a CD. They're the same
6 size, right?

7 A. That's right, same size.

8 Q. Now, if I handed this up to you and let you
9 look at them with your naked eye, can you tell the
10 difference and tell me which one is the CD and which one
11 is the DVD?

12 A. Of course not.

13 Q. Is that what your technology and your method
14 does when -- with respect to once one of these disks
15 goes inside of a drive?

16 A. That's right.

17 Q. The data that is on either the DVD or the CD,
18 is it encoded the same way or differently?

19 A. Differently, of course. DVD stores the movie,
20 and CD stores just the music. And the capacity is
21 totally different, so, basically, the DVDs can store
22 much more data than CD.

23 Q. The disk drive that we -- that the Defendants
24 make, what are some of the products you find those
25 drives in?

1 A. Well, in the computer, laptop computer, and
2 desktop computer.

3 Q. How about a DVD player?

4 A. DVD player, of course.

5 Q. CD player?

6 A. Well, CD player, of course.

7 Q. And then how about Blu-ray -- well, first of
8 all, what is Blu-ray technology?

9 A. Well, my knowledge that Blu-ray is another new
10 format which can store even more data than DVD. Also,
11 it's recordable. I do believe that your -- the Blu-ray
12 disk player, you just started to sell in the United
13 States market a couple years ago.

14 Q. Okay. If we had -- if we're looking at our
15 timeline, do you remember approximately when Blu-ray
16 technology came into existence?

17 A. Well, I believe it's around 2005/2006.

18 Q. Let me go back to the process that you went
19 through in obtaining this patent from the United States
20 government.

21 First of all, after you came back from this
22 fishing trip, what did you do?

23 A. Well, even -- even -- I didn't -- even before
24 I come back to my house, on the boat, I start drawing
25 the pictures. I made some sketches and tried to figure

1 out what came to in my -- in my brain and tried to
2 write -- write it down.

3 Q. Did you have to go to the library to do
4 anymore studying?

5 A. Of course I did. I went to the library and
6 read some books to make sure that my idea is right.

7 Q. How long -- I assume, then, you wrote an
8 application that you submitted to the Office.

9 A. Well, actually, after I invented -- it took --
10 it took about around six months to apply the patent
11 application.

12 Q. Did you write that application yourself?

13 A. Yes, I did.

14 Q. About how much did it cost you to file the
15 patent application?

16 A. Well, I -- I don't remember exactly, but the
17 filing fee I have to pay for the Patent Office was about
18 500 to 600, 700 -- \$700, something like that.

19 Q. When you filed your patent application and
20 dealt with the United States government, did you
21 disclose to them everything that you knew about your
22 invention?

23 A. Of course, I did.

24 Q. Why did you do that?

25 A. Well, of course, the -- that's the obligation,

1 to disclose everything I knew, all of the reference I
2 knew. Also, the patent has to be good to license to
3 somebody else.

4 Q. And you sent this in, and was it assigned to a
5 trained Patent Examiner that worked for the United
6 States government?

7 A. That's right.

8 Q. And did he -- we talked about office actions.
9 Did he send you an office action asking you
10 questions?

11 A. That's right.

12 Q. And did you file a response back to him?

13 A. That's right.

14 Q. In December of 2006, did he allow your patent
15 and issue you the '981 patent?

16 A. Well, December '96 is the date of my patent
17 issued. And I know once from the Examiner was, I think
18 I received the allowance of just a month before the
19 issue date of my patent.

20 Q. So sometime in November of 1996, the Office --
21 the Patent Office sent you a letter saying we're going
22 to allow your patent, and then about a month later, you
23 received this red-ribbon patent?

24 A. That's right.

25 Q. Now, how did -- when you first got this at the

1 end of 1996, now we're in the beginning of 1997, how did
2 you get companies to recognize your patent?

3 A. Well, right after I received allowance from
4 the Patent Office, I started to sending the letters to a
5 lot of companies to introduce my idea.

6 Q. And were you sending these letters yourself or
7 with attorneys or both?

8 A. Both. At the beginning, I send the letters to
9 the companies by myself, and a couple years later --
10 well, one year or two years later, I started working
11 with the Japanese patent lawyer or patent attorney.

12 Q. Now, at the time that your patent application
13 or your patent was issued, were there companies making
14 DVD players?

15 A. Well, when I started sending the letters,
16 right after I received allowance from the Patent Office,
17 nobody was making a DVD player.

18 Q. And who were some of the companies that you
19 sent letters to at that point in time?

20 A. Well, Toshiba, Sony, Panasonic, Sharp. Most
21 of them are Japanese companies.

22 Q. About how long after your patent issued did
23 companies start making DVD players?

24 A. Well, my patent is issued 1996, December.
25 Well, my understanding is that the first introduction of

1 a DVD player is sometime spring of '97 in Japan.

2 Q. And you brought up a good point there.

3 Were DVD players in Japan and/or Asia before they made
4 it to the United States?

5 A. That's my knowledge. Because DVD standards
6 basically determined by the Japanese company, Toshiba,
7 Panasonic, and Sony and Philips. Philips, of course,
8 here is a Netherland company.

9 Q. And in '97, when there were companies that
10 began making DVD players, how many were there?

11 A. Well, I think at the beginning, all I remember
12 when I go into the store, I could find only two DVD
13 player. One is made by Panasonic; one is made by
14 Toshiba.

15 Q. When we looked at the timeline, we saw that
16 you entered into a number of agreements in 1997/1998,
17 correct?

18 A. That's right.

19 Q. What was your original licensing policy with
20 respect to that timeframe?

21 A. Well, basically, first I asked them whether
22 they are interested in my idea or not. And next, the
23 company who paid attention of who pay interest to my
24 idea, I offer the price or just listen to their price.

25 Q. Did you accept a number of licenses in the

1 '97/'98 timeframe that were for modest amounts?

2 A. That's right.

3 Q. What were some of the reasons why you did
4 that?

5 A. Well, because I didn't have any money, and I
6 didn't have enough funding. If I find somebody infringe
7 my patent, I didn't have any bargaining power. So I
8 thought I should save enough money, as much as I could,
9 to protect my own property.

10 Q. About 1999, did your licensing policy begin to
11 change?

12 A. That's right.

13 Q. And tell us why that is.

14 A. Well, around 1999, I kind of noticed that the
15 DVD market is quickly changing, because at the
16 beginning, in 1997, I could see just a few DVD players.
17 Everybody is using the VCR/VHS format. I didn't see
18 many of DVD titles back then.

19 Getting to 1999 or 2000, when I walk into the
20 store, I was seeing a lot of DVD players and tons and
21 tons of DVDs movies on the shelf. So I realized DVD
22 business is kind of kicking off and kind of promising --
23 going to be the promising product in -- in the near
24 future.

25 Q. Okay. And I talked in my opening about a

1 couple of letters that your lawyer sent out. Let's take
2 a look at those.

3 MR. SANKEY: If we could, pull up first
4 Plaintiff's Exhibit 492.

5 Q. (By Mr. Sankey) Which is a letter called Trop,
6 Pruner. Is Mr. Trop one of your patent attorneys?

7 A. That's correct.

8 Q. And did you authorize him to send letters?

9 This one appears to be a company called
10 Camelot Technology.

11 A. Yes, I did authorize him.

12 MR. SANKEY: If we could go to the end of
13 this letter and take a look at the timeframe.

14 Probably one more page, please.

15 Q. (By Mr. Sankey) On the last page of the
16 letter -- it looks like we only have one page of that on
17 this screen. But let me read this to you and ask if
18 this is something that -- and we'll have this for the
19 jury, since it's been admitted into evidence.

20 But it says that: In this regard, if a
21 license is executed within two months from the date of
22 this letter, we will offer you a license under
23 reasonable terms.

24 Was that something you authorized Mr. Trop to
25 tell Camelot Technology?

1 A. That's right.

2 Q. And by the way, did Camelot Technology ever
3 enter into a license agreement?

4 A. No, they did not.

5 Q. Let's take a look at one of -- Plaintiff's
6 Exhibit 503.

7 Now, this is a letter from Mr. Hagihara. Tell
8 the jury who Mr. Hagihara is.

9 A. He is the patent attorney or patent lawyer I
10 talked about.

11 Q. Okay. And he's sending a letter to LG
12 Electronics. That's located in Korea, correct?

13 A. That's right.

14 Q. And, again, we're looking at -- this letter
15 went out at the end of December of '98.

16 MR. SANKEY: Can we look at the end of
17 this letter, please?

18 I'm sorry. Let's go back to the first
19 page.

20 THE COURT: Mr. Sankey, before you ask
21 anymore questions, let me tell the jury something.

22 On these exhibits, there's boxes of
23 exhibits. You will be shown lots of different exhibits.
24 They give you each time the Plaintiff's exhibit number.
25 It looks like on this setup that number up at the very

1 top is Exhibit 503.

2 If you see an exhibit that you think you
3 might be interested in that you want to keep in mind,
4 you just need to write that number down, because at the
5 close of the trial, rather than send in boxes of
6 exhibits, I'll send in the exhibits that you actually
7 request rather than -- so I'll just tell you, if you see
8 an exhibit that you want to make a note of, just make a
9 note of the number and what it is.

10 Okay. Let's proceed.

11 Q. (By Mr. Sankey) Did Mr. Hagihara send letters
12 out telling people that if they did not accept a license
13 agreement that you had other patents that were issuing
14 and that they were then going to have to pay a running
15 royalty?

16 A. That's right.

17 Q. And what is a running royalty?

18 A. Running royalty is the very basic licensing
19 system. I charge them the -- based upon how many
20 product they are making, how many product they are
21 selling, I think there's a general way to license the
22 intellectual property to somebody else.

23 Q. In the '97/'98/'99 timeframe, you did lump
24 some license agreements, correct?

25 A. No, I did not.

1 Q. You did lump some ones and not running
2 royalties, correct?

3 A. Of course, I couldn't do it, because the
4 future of the DVD was nobody -- nobody knows about
5 what's going to happen for the DVD business. And most
6 of the licensee I made agreement with, they took the
7 license before they start making any DVD.

8 And, of course, those company are not making
9 any DVD products, so I cannot charge them on protection
10 basis or sales basis, because protection and sales were
11 zero back then.

12 Q. They had yet to start making and/or selling
13 product?

14 A. That's right.

15 MR. SANKEY: Wendy, if we could put the
16 timeline back on.

17 Q. (By Mr. Sankey) Let me talk to you about the
18 market, ODD market.

19 Because your technology and your 15 patents
20 are in this industry, did you keep abreast of what was
21 happening in the market?

22 A. Of course, I have been -- walk into the store,
23 what kind of product they are selling, and of course I
24 have been watching the DVD market very closely by using
25 internet or any other source.

1 Q. Okay. And let's start, if we would, at about
2 the time that you filed your patent application and
3 obtained your patent in '95 and '96.

4 What was the technology that was being used
5 primarily for movies?

6 A. Well, the VHS format. VCR was dominant. VCR
7 was the king.

8 Q. Do they have a store in Japan or in Tokyo
9 where you were living, similar to what we have here,
10 Blockbuster?

11 A. Yes, we do.

12 Q. And did you go to Blockbuster in the '95/'96
13 timeframe to obtain moves?

14 A. Well, the only format for playing a movie was
15 VHS.

16 Q. Were there any DVDs available at that
17 timeframe on movies?

18 A. Of course not.

19 Q. Did computers during this timeframe have DVD
20 players?

21 A. No. There was CD-ROM.

22 Q. When these first DVD players came out, you
23 say, and the company started making them in this
24 timeframe, were they expensive?

25 A. It was very expensive. My best recollection

1 is at the beginning, a DVD player cost almost like
2 \$1,000.

3 Q. And ultimately, when it becomes much more
4 popular, what's the average price of a DVD player?

5 A. Well, it's getting cheaper and cheaper, and
6 sometime around 2000/2001/2003, price of a DVD player
7 started to be less than \$100.

8 Q. Now, when you went to this Blockbuster
9 similar-type company in Japan, toward the '98/'99/2000
10 timeframe, did they start having movies in DVD?

11 A. Well, around the 1997, I believe that was the
12 year the DVD player was produced. Right after I heard
13 the news, I went to the Blockbuster sort of shop in
14 Japan. Only thing I could find was a 3 -- one music DVD
15 and two other DVD movies. So there was only 3 DVD
16 movies in the store.

17 Q. So let me jump ahead a little bit on the
18 timeline and go closer to 2002/3 and even 2006.

19 By 2006, when you went into the store, what
20 would you find with respect to the format that movies
21 were located on?

22 A. Well, it's only DVD format. I couldn't find
23 any VHS format anymore.

24 Q. By 2006, did computers have DVD players?

25 A. Yes, I do believe so. Most of the computer

1 does have the DVD-ROM or any DVD so-called burner, DVD
2 recordable drive. And it's very hard to find any
3 computer with a CD-ROM.

4 Q. With respect to video games, what format were
5 they on in this later time period?

6 A. Well, for the video game, you know, most of
7 the people used some kind of cartridge system for the
8 Nintendo. And it turned to be CD-ROM sometime late
9 1990.

10 And I believe Sony start making DVD basis game
11 player called PlayStation could be 2000. And also it
12 was very slow start. And around 2002/2003, most of the
13 format for the game turned to be the DVD basis.

14 Q. Now, if we look back in this timeframe,
15 '98/99, about how many companies world-wide were making
16 DVD players?

17 A. Well, my very best guess is maybe 20, 30
18 company.

19 Q. Okay. If we jump to 2006, when you filed this
20 lawsuit against the Quanta Defendants, about how many
21 companies do you think are making DVD players?

22 A. Well, I believe it's hundreds of companies.

23 Q. Did this change in the market also affect or
24 have a change in your licensing policy?

25 A. That's right.

1 Q. Is it your understanding that from the first
2 DVD in 1997 forward, has sales of DVDs around the world,
3 and especially in the United States, increased?

4 A. That's right. It's increasing very slowly,
5 but some -- some point around the 1999 or 2000, the DVD
6 business is rapidly changing and grow up like -- grow up
7 very -- suddenly grow up very high.

8 Q. These 26 or 27 companies that you have
9 licensed, you gave them the right to manufacture and
10 sell products, correct?

11 A. That's right.

12 Q. Did you ever give any of those companies the
13 right to issue sublicenses to other companies?

14 A. Well, sublicense is something I only give them
15 the -- not just a license and license to somebody else.
16 Of course, absolutely not. I've never give any right to
17 any -- any company.

18 Q. All right. And I want to talk to you just
19 briefly about what I had mentioned to the jury in
20 opening.

21 But is it your understanding in this case that
22 there have been a number of documents that the
23 Defendants have produced that they chose to make
24 attorney's eyes only, since you're inventing in the same
25 industry?

1 A. That's right.

2 Q. And so, for example, there are agreements that
3 they've entered into with these other companies.

4 Have you been allowed to see those agreements?

5 A. No, I cannot see.

6 Q. And the financial documents that show the
7 amount of sales that they make in the United States and
8 the amount of money that they make, have you been
9 allowed to see those agreements?

10 A. I cannot see it, and I have never seen it.

11 Q. Okay. And so what did that require you to do
12 in part in this lawsuit, since you couldn't see those
13 documents?

14 A. Well, my expert can -- my experts are able to
15 see those documents, so I rely on their opinion.

16 Q. Is it your testimony to this jury that you
17 believe your patent is more valuable today than it was
18 when it was issued in 1996?

19 A. That's correct.

20 Q. Now, as we heard earlier from Judge Ward, this
21 patent is good for how long?

22 A. 20 years.

23 Q. And so until 2015, no one can make and sell or
24 ship products into the United States without getting
25 your permission or getting a license agreement, correct?

1 A. That's my understanding, yes.

2 Q. Have you seen any sign that the DVD market is
3 declining and that there are less sales?

4 A. Well, what I've been seeing around 2006, of
5 course, I didn't do any market research by myself, but
6 with the common sense, when I go to the store or when I
7 see the internet, DVD business is just growing until
8 2006.

9 Q. Now, in -- there's two main Defendants, QSI
10 that manufactures the drive, and QCI that puts it into
11 their laptops and sells it.

12 Did you have one of your attorneys in
13 2002/2003 send a letter to QSI, the manufacturer?

14 A. Well, I don't remember the year, but one
15 occasion my Japanese attorney did contact with Quanta
16 Storage Incorporation. And one occasion, my U.S.
17 attorney, Mr. Trop, did send the letter to Quanta
18 Storage or Quanta Computer, Incorporation.

19 Q. Okay. Now, the letter that was sent to Quanta
20 Computer would have been in 2006, correct?

21 A. That's right.

22 Q. Did -- what was the method of sitting down and
23 negotiating a license agreement with someone like Quanta
24 Storage?

25 A. Well, first contact with them was sending the

1 letters and make sure whether they are interested in
2 taking my license or not. Then we -- basically, my
3 attorney is going to negotiation for -- for the
4 licensing price on a case-by-case basis.

5 Q. Okay. With respect to Quanta Storage, were
6 they interested in taking the license?

7 A. Well, what I do remember is they said they are
8 not interested in my idea; they're not interested in
9 taking the license from me. Also, they said they are
10 not infringing my patent.

11 Q. With respect to any specific numbers, were
12 numbers discussed at all with Quanta Storage, Inc., in
13 2002?

14 A. Well, like I said, they said they did not --
15 they are not interested to taking a license, so I didn't
16 offer anything.

17 Q. As we sit here today, does any of the
18 Defendants have a license agreement with LaserDynamics?

19 A. No, absolutely not.

20 Q. The products that they make and that they're
21 selling and shipping into the United States, do they
22 determine -- when you put a disk into their drive, do
23 they determine what type of a disk it is before it
24 begins playing it?

25 A. That's my understanding, yes.

1 Q. And is that a basic, general description of
2 your technology?

3 A. That's right.

4 Q. What is it that you're asking the Ladies and
5 Gentlemen of the jury to do in this case?

6 A. Well, I'm asking the jury that -- to decide to
7 a reasonable amount of my damage caused by the Defendant
8 infringing my patent.

9 MR. SANKEY: I have no further question,
10 Your Honor.

11 THE COURT: Okay. Mr. Parker?

12 MR. PARKER: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. PARKER:

15 Q. Good morning, Mr. Kamatani.

16 A. Good morning, Mr. Parker.

17 Q. How are you doing?

18 A. I'm okay. How are you?

19 Q. Good.

20 Now, I think you've -- I'm going back a little
21 bit to your background just briefly.

22 You first went to college in 1990 in
23 Pennsylvania?

24 A. Edinboro College in Pennsylvania.

25 Q. For a couple of years?

1 A. For two years, yes.

2 Q. And you did not get a degree there?

3 A. No.

4 Q. Okay. And you were -- you took some
5 engineering courses?

6 A. It's called pre-engineering course.

7 Q. Okay. Were you ever formally accepted into
8 their engineering program?

9 A. Well, basically, all Edinboro College could
10 give the student was pre-engineering school only, and
11 transfer to some other college or university for
12 advanced engineering to take advanced engineering
13 course.

14 Q. And then you went to MIT?

15 A. Yes, I did.

16 Q. And how long were you at MIT?

17 A. Two years.

18 Q. Wasn't it actually just eight months, eight
19 months total?

20 A. No.

21 Q. So if -- if MIT's records show that you were
22 just there eight months, they're wrong?

23 A. Well, I been there for two years.

24 Q. Well, were you there over -- you know, from
25 one year into the next, but the total amount of time was

1 just eight or nine months?

2 A. Well, I took the class only -- only two
3 semesters. And after that, I start working at the
4 laboratory for the professor.

5 Q. You took three courses at MIT; is that
6 correct?

7 A. Well, I don't remember exactly.

8 Q. And you did not get a degree from MIT either,
9 did you?

10 A. I did not, of course.

11 Q. And you -- so you do not have an engineering
12 degree from any institution; is that -- is that correct?

13 A. That's right.

14 Q. But you describe yourself as an engineer, do
15 you not?

16 A. Well, I do believe I'm an engineer.

17 Q. Okay. And you describe yourself and hold
18 yourself out as an engineer?

19 A. I don't quite see the difference.

20 Q. You describe yourself and you call yourself an
21 engineer?

22 A. Yes.

23 Q. To the public?

24 A. To the public, I do call myself I'm an
25 engineer. I don't introduce myself to the public I'm an

1 engineer.

2 Q. But you are not, for instance, a registered
3 professional engineer anywhere either here or Japan,
4 correct?

5 A. Well, I don't have a degree; that's correct.

6 Q. Nor do you have what's called a license;
7 you're not a registered professional engineer?

8 A. What kind of a registration that's not about
9 degree?

10 Q. Do you not understand that the engineering
11 profession has certain registrations that in order to
12 hold yourself out and sign certain documents and things
13 of that nature, you need to get those certifications?

14 A. Well, I don't have any certification --

15 Q. Okay.

16 A. -- as engineer.

17 Q. Okay. Well, that's good.

18 Now, for the very first patent you applied
19 for, you did hire a patent attorney to help you.

20 A. That's right.

21 Q. But after that, you -- at least through the
22 '981 patent, you took care of it yourself; you did it
23 all yourself without an attorney's help; is that
24 correct?

25 A. That's correct.

1 Q. Okay. Now, with regard to the patent in this
2 case, you wrote the application without anybody's help.

3 A. That's right.

4 Q. And you handled the -- what's been described
5 as the prosecution of the patent yourself personally?

6 A. Prosecution, like responding to the office
7 action, yes, I did by myself.

8 Q. Yes, sir.

9 And when you first came up with the idea for
10 this patent, that wasn't based on anything you'd learned
11 at MIT, was it?

12 A. No. I didn't learn anything about the optical
13 disk technology at MIT.

14 Q. Okay. And we saw some notes that you put up
15 on the screen, a picture of you fishing and then a
16 picture of the disk and a picture of the fish-finder.
17 Those are drawings you -- I think you've already told
18 us, you did very recently; is that correct?

19 A. That's right, only one month ago.

20 Q. Yeah. But back at the time when you were
21 thinking about this and on the fishing trip and after
22 that, you stated that you prepared notes at that time,
23 correct?

24 A. That's right. Right after I came up with the
25 idea, even on the boat, I start drawing something in the

1 boat.

2 Q. Right. But you don't have those anymore.

3 A. No.

4 Q. You threw them away?

5 A. Well, simply I didn't think that the -- those
6 notes or memos were important, so I think I lost them.

7 Q. So as important as this patent is, it wasn't
8 important enough for you to put those notes in a safe
9 place and keep them?

10 A. Sure. I do wish that I could keep those memos
11 now.

12 Q. And in that time period, you also kept a
13 personal diary that discussed what you were doing and
14 when you were doing it, in terms of applying for patents
15 and doing other things; isn't that right?

16 A. Well, of course, I had been keeping a diary,
17 but sometime I took those patent -- patent incident to
18 my diary -- sometime I did; sometime I didn't.

19 Q. But those diaries are gone, too, aren't they?

20 A. Well, no, I do have a diary, but my diary in
21 the old computer is gone.

22 Q. The diary that would apply to this time period
23 we're talking about, you don't have anymore; is that
24 correct?

25 A. That's right.

1 Q. So that's not something we can look at either
2 today.

3 A. That's right.

4 Q. Okay. So you don't have any documents that
5 are what I would describe as contemporaneous documents
6 related to your idea or this patent; is that correct?

7 A. I don't have any memos. I don't have any
8 diaries. I don't take any so-called technology note to
9 prove that my invention. I don't have any.

10 Q. Okay. Now, you claim your invention relates
11 to an optical disk drive distinguishing between CDs and
12 DVDs in sort of a basic statement, correct?

13 A. Well, CD and DVD and any other different
14 format.

15 Q. Okay. But you never actually built one of
16 these drives, even a prototype, to test your patent, did
17 you?

18 A. That's correct.

19 Q. Okay. And you never even tested one of these
20 drives using laboratory equipment or anything else to
21 determine what the effect of your patent or your claimed
22 technology was, did you?

23 A. Well, I think I did once dismantle a CD player
24 and checked inside, but, of course, I didn't use any
25 laboratory equipment to inspect those players.

1 Q. You didn't attach oscilloscopes or other
2 measuring devices to --

3 A. I haven't done any such kind of thing.

4 Q. All right. And you have not yourself written
5 any software or prepared any source code or anything to
6 implement your technology; is that correct?

7 A. For the optical -- optical disk technology,
8 no.

9 Q. For the '981 patent?

10 A. No.

11 Q. You've not done that. Okay.

12 Now, your patent includes a discussion of TOC
13 or table of contents data on optical disks; is that
14 right?

15 A. That's right.

16 Q. Okay. And the different types of optical
17 disks include CDs, minidisks, and DVDs; is that right?

18 A. Well, of course, the -- the purpose of my
19 invention is to play a different type of disk, which is
20 included CD, minidisk, and DVD -- DVD on different kind
21 of format and also the Blu-ray disk.

22 Q. But at the time that you came up with the idea
23 for your patent, you didn't even know how the data was
24 organized on a CD, did you?

25 A. Data is organized on a CD. Of course, what

1 kind of -- what kind of data was on the CD, I didn't
2 know that.

3 Q. You didn't know how it was organized or how it
4 was placed on the -- on the -- on the disk.

5 A. On the CD, no.

6 Q. Okay. And at the time you prepared your
7 patent, you didn't know how the data was organized on a
8 minidisk, did you?

9 A. No.

10 Q. And you didn't know whether minidisks even had
11 a table of contents, did you?

12 A. Well, I didn't know much about minidisks.

13 Q. Okay. And you didn't even know whether the CD
14 and the minidisk used the same laser diode to read them,
15 did you?

16 A. Well, I didn't know that.

17 Q. Okay. And -- and turning to DVDs, isn't it
18 true that you didn't know what the structure of a DVD
19 even was at the time of your claimed invention?

20 A. Well, at the time of my invention, DVD was
21 not -- was not produced yet, so, of course, I didn't
22 know the specification of the DVD. At the time --

23 Q. And there were no standards -- I'm sorry. I
24 didn't mean to interrupt you.

25 A. That's fine.

1 Q. And please, if I do that, let me know, okay?

2 A. Sure.

3 Q. In fact, there were no standards available in
4 the market for DVDs at the time of your claimed
5 invention.

6 A. At the time of my invention, there was no DVD
7 standard.

8 Q. And if there were no DVD standards at all,
9 there were clearly no standards that distinguished
10 between single-layer or multilayer DVDs; is that
11 correct?

12 A. Well, my understanding at the time of my
13 invention, DVD standard -- so-called DVD standard was
14 not fixed.

15 Q. All right. And so do you know whether the --
16 the multilayer DVD had even come into existence at that
17 time or was under consideration at that time?

18 A. Well, I thought it could happen, but like I
19 said, DVD standard was not fixed at the time of my
20 invention, so I didn't know.

21 Q. And no one was commercially even manufacturing
22 and selling DVDs at the time you came up with your
23 invention, correct?

24 A. That's correct.

25 Q. And you didn't know at the time you came up

1 with your invention whether a DVD had a table of
2 contents on it, did you?

3 A. Of course, like I said, that there was -- no
4 DVD standard was fixed, so I didn't know then.

5 Q. Okay. And were you aware of the thickness of
6 the data layers of CDs versus DVDs at the time you came
7 up with your invention?

8 A. Well, at the time of my invention, I think I
9 knew that your -- where the data layer is for the CD,
10 but of course, like I said, again, that I didn't know
11 what kind of -- actually what kind of DVD specification
12 will be released, so I didn't know -- the disk placement
13 of the data layer for the CD, I did not know.

14 Q. And even today you don't claim expertise in
15 the distance and sizing of data layers, both in CDs or
16 DVDs, do you?

17 A. Well, I don't memorize the number, but, of
18 course, what I do know is that the position of the data
19 layer for the CD and DVD is different.

20 Q. And the data layer in the CD is 1.2
21 millimeters, correct?

22 A. Well, I have not -- I don't have any
23 knowledge, so I don't know.

24 Q. Okay. And so you -- do you know whether the
25 dual -- in a dual-layered DVD, the first layer is .575

1 millimeters and the second layer is .625 millimeters?

2 Do you know that?

3 A. No, I didn't know.

4 Q. Okay. And your patent does not specifically
5 discuss distinguishing the position of the data layers,
6 does it?

7 A. Well -- well, I wish that -- could I have a
8 copy of my patent?

9 Q. Yes.

10 MR. PARKER: May I approach, Your Honor?

11 THE COURT: Certainly.

12 THE WITNESS: Thank you.

13 MR. PARKER: Sure.

14 Q. (By Mr. Parker) What I asked you was, your
15 patent does not specifically talk about distinguishing
16 the position of data layers, does it?

17 A. Position of the data layer.

18 Q. Yes, sir.

19 A. Well, my patent is disclosing the number of
20 data layers, so that's correct.

21 Q. The way I state it is correct; it does not?

22 A. No.

23 Q. Okay. Now, identifying the total number of
24 data layers is a significant and novel part of your
25 patent; is that correct?

1 A. That's right.

2 Q. Do you know the number of data layers that
3 could be determined using S-curve technology?

4 A. Do you mean at the time of the invention or
5 now?

6 Q. At the time of the invention first.

7 A. At the time of the invention, I didn't know
8 about S-curve -- so-called S-curve technique.

9 Q. Okay. And so you said -- you asked me at the
10 time of the invention or now. Do you know now?

11 A. Well, I don't know the detail, but I do know
12 what -- I don't know the detail, but I do know the -- I
13 think I have heard about S-curve.

14 Q. Okay. But you're not personally knowledgeable
15 about it?

16 A. No. No.

17 Q. Okay. Do you know how the S-curve method is
18 done?

19 A. Like I said, I don't know what the S-curve
20 technique is now, so I just don't know.

21 Q. And do you know if it can be used to determine
22 the number of data layers on a disk?

23 A. Like I said, again, I don't know what the
24 S-curve technique is, so I just don't know.

25 Q. And you don't know if it can be used to

1 determine pit density on a disk?

2 A. No.

3 Q. And you never even heard of the S-curve until
4 after you submitted your patent application; is that a
5 fair statement?

6 A. Well, the first time I heard about the word
7 S-curve technique is just a -- just a few years ago.

8 Q. Okay. After your patent.

9 A. That's right.

10 Q. And your patent, obviously, then, doesn't
11 mention S-curve; is that right?

12 A. No. That's correct.

13 Q. Okay. So, obviously, you did not, at least
14 with respect to the '981 patent, come up with the idea
15 of using the S-curve analysis as a distinguishing factor
16 in ODDs, correct?

17 A. Well, like I said, again, I don't know what is
18 the -- what kind of a technology that -- what the
19 S-curve technique is, so I cannot compare something I
20 don't know. And with my patent, I cannot do that.

21 Q. Now, let's discuss some more recent events.
22 You understand that the Patent Office did what's called
23 a reexamination of your patent?

24 A. Yes, I do know that, yes.

25 Q. Okay. And you're aware that one of the

1 references they considered in the reexamination was
2 something offered by Mr. Maeda, M-A-E-D-A?

3 A. Well, I do know that the reexamination process
4 is going on as we speak, but I don't know the detail of
5 the reexamination process, because it's done by my
6 attorneys.

7 Q. And -- but your company, LaserDynamics,
8 submitted to the Patent Office a statement by a patent
9 owner in ex parte reexamination.

10 Do you -- are you familiar with that?

11 A. No. But, of course, like I said,
12 reexamination process is ongoing.

13 Q. And you don't -- you don't understand -- you
14 never looked at that statement by a patent owner or read
15 it?

16 A. Well, I don't know that any specific document
17 I have sent to Patent Office for reexamination process.

18 Q. Do you know if in that statement, you explain
19 why your patent is not the same as the Maeda patent?

20 A. You are still talking about the reexamination
21 process, right?

22 Q. Yes, sir.

23 A. I haven't seen any documents.

24 MR. PARKER: This case is about
25 technology, but sometimes we're not as good with our

1 technology as we need to be.

2 Oh, and it's my fault, see? There you
3 go.

4 Q. (By Mr. Parker) Can you see that, sir?

5 A. Yes, I do.

6 Q. Do you recognize that as statement by owner in
7 ex parte reexamination?

8 A. (No response.)

9 Q. Have you seen that before?

10 A. Well, maybe I did, or maybe I did not. I
11 don't -- I don't remember this document.

12 MR. PARKER: Can we take it to the end?

13 Q. (By Mr. Parker) Do you recognize who signed
14 it?

15 A. Well, I don't know -- it says Nancy Meshkoff,
16 but I don't know who is she.

17 Q. Do you know if that's something acting on your
18 behalf?

19 A. Well, no.

20 Q. Okay. You agree that Maeda talked about
21 detecting the number of recording layers in an optical
22 disk by counting the number of S-curves?

23 A. Are you talking about Maeda? You said Maeda
24 has the patent and --

25 Q. And that it -- I'm sorry. Go ahead.

1 A. -- and something -- the statement my attorney
2 filed to reexamination process mentioned about the Maeda
3 patent, but, of course, I haven't ever seen those
4 patents, and I haven't ever seen any reexamination
5 documents.

6 So my answer is, I just -- I haven't ever seen
7 those documents.

8 Q. Okay. Do you know whether Mr. Maeda taught
9 the number of recording -- detecting the number of
10 recording layers in an optical disk by counting the
11 number of S-curves? Do you know?

12 A. Well, like I said, I haven't ever seen what
13 you're saying, the Maeda patents, so I just don't know.

14 MR. PARKER: Can we see that section?

15 Q. (By Mr. Parker) Okay. Do you see the section
16 there that's been highlighted?

17 A. Uh-huh, yes, I do.

18 Q. And you see that it says the apparatus detects
19 the number of recording layers in an optical disk by
20 counting the number of S-curves.

21 Do you see that?

22 A. Yes, I do.

23 Q. And do you understand this is a document that
24 was submitted to the Patent Office -- whether or not you
25 recognize it, was submitted to the Patent Office on your

1 behalf?

2 A. That's right.

3 Q. Okay.

4 A. My attorney filed those documents, yes.

5 Q. Okay. And do you agree that Maeda taught the
6 use of a comparator?

7 A. Like I said, I don't know what the -- Maeda's
8 patent is, so I cannot compare the -- Maeda's patent and
9 my patent.

10 MR. PARKER: Can we find that section,
11 please?

12 Q. (By Mr. Parker) Do you see the reference
13 there -- and I think I'm pronouncing that correctly -- a
14 comparator that compares the focus error signal?

15 A. Yes, I do see it, yes, sir.

16 Q. Okay. And, again, this is a document that was
17 submitted to the Patent Office on your behalf.

18 A. I believe so, yes.

19 Q. And do you agree that Mr. Maeda taught that
20 the, quote, focus and tracking gains are then set in
21 accordance with the S-character amplitude level
22 difference of the recording membranes, which is an
23 indication of the amount of light reflected from the
24 face of the membrane and thus the position of the
25 membrane?

1 A. Well, if it is prepared by my attorney on my
2 behalf, of course, I agree with it.

3 Q. I mean, you don't deny that it was submitted
4 on your behalf.

5 A. What do you mean I don't deny? This is --

6 Q. This was submitted on your behalf.

7 A. Well, if this is submitted by my attorney, of
8 course, I agree with it.

9 Q. Okay. And in order to distinguish your '981
10 patent from the Maeda patent, you told the Patent Office
11 that the S-curve was not the same as your patent,
12 correct; S-curve discrimination is not the same as your
13 patent?

14 A. Well, I haven't seen this document, so if you
15 could point me out where -- whether this document says
16 that's so, I can give you the answer.

17 MR. PARKER: I think it was the
18 section -- well, that's all right.

19 Q. (By Mr. Parker) In any event, without having
20 to waste time looking for the technology, because our
21 time is limited -- looking for the statement, because
22 our time is limited, your -- you do acknowledge that
23 your patent does not even mention the S-curve, correct?

24 A. That's right.

25 Q. So that it doesn't describe discrimination of

1 a CD versus a DVD by comparing S-curves, correct?

2 A. Well, like I said, again and again, I don't
3 understand what the S-curve technology is, so how can I
4 compare the technology of something I don't know with my
5 patent?

6 Q. Okay. Now, we'll leave S-curves alone.
7 Let's talk about your license agreement, okay?

8 A. Sure.

9 Q. And let's talk about Trial Exhibit 12, and
10 we'll show it.

11 You entered into a license agreement with
12 Philips Corporation dated July the 7th, 1998; is that
13 correct?

14 A. That's correct.

15 Q. Do you recognize this as the license agreement
16 you entered into with Philips Corporation?

17 A. Yes, I do.

18 Q. And you signed that license agreement?

19 A. Yes, I did.

20 Q. And what was the amount that was paid by
21 Philips Corporation to obtain that license agreement?

22 A. Well, if you could pause -- yes.

23 Q. I will. It's \$120,000 U.S., correct?

24 A. That's correct.

25 Q. And you agreed to that.

1 A. Well, of course, I did. That's why I do have
2 agreement.

3 Q. And you accepted that money.

4 A. That's right.

5 Q. And in return for that, Philips Corporation
6 got a worldwide, nonexclusive right to use your patents.

7 A. That's correct.

8 Q. So they didn't have to pay any more money.

9 A. So Philips doesn't have to pay more money, as
10 long as they keep those agreements, yes.

11 Q. They don't have to pay for each one they sell
12 or anything like that.

13 A. Well, as long as it's covered by my agreement,
14 that's right.

15 Q. Okay. And they paid for the patents that are
16 listed on this document, LD859 through 860.

17 MR. PARKER: There we go.

18 Q. (By Mr. Parker) Those are the patents that
19 they were licensing, correct?

20 A. Well, I believe so, yes.

21 Q. So more than just the '981 patent.

22 A. That's right.

23 Q. So they got multiple patents for \$120,000.

24 A. That's right.

25 Q. Was that agreement with Philips, was that

1 negotiated by you or by your counsel?

2 A. Well, I believe it has been negotiated by --
3 by my Japanese patent attorney, Mr. Hagihara.

4 Q. Okay. But once he completed those
5 negotiations, you agreed to sign the document and accept
6 that as compensation, correct?

7 A. Of course, I do accept the terms of this
8 agreement, and I signed, yes.

9 Q. Okay.

10 MR. PARKER: Now let's go to Trial
11 Exhibit 106, please.

12 Q. (By Mr. Parker) Do you recognize this as the
13 patent you entered into with NEC Corporation?

14 A. Well, may I ask? Is this the top page of the
15 agreement?

16 Q. This is the first paragraph that shows that
17 Party A is NEC. If you would rather see paper copies,
18 we can get them for you. I was just trying to move
19 things along, but we'll --

20 A. Oh, I'll -- I'll -- is this --

21 Q. You see this?

22 A. -- a translation of agreement with NEC?

23 Q. Well --

24 A. I think -- I think it's not the -- I do
25 believe that this is not the original.

1 Q. The original was in Japanese?

2 A. I do believe so, yes.

3 Q. All right. Which would probably be somewhat
4 difficult -- not for you to read, but for all the rest
5 of us to read.

6 A. Sure. I understand, sir.

7 Q. Okay. So you did enter into a license
8 agreement with NEC, correct?

9 A. Yes. This is the original agreement with the
10 company called NEC.

11 Q. And that's the one that's in Japanese, right?

12 A. That's right.

13 Q. And that means nothing to me, although my
14 daughter speaks it fluently.

15 A. That's great, sir.

16 Q. Well, when you have -- when you've had four
17 Japanese exchange students living with you, that's what
18 happens. I guess I should have learned more than I did.

19 MR. PARKER: Okay. Now let's go back to
20 the English language version, please.

21 Q. (By Mr. Parker) And the fee that was paid
22 by -- the license fee that was paid by NEC, do you
23 recall what that was?

24 A. Well, again, this is a translation, so would
25 you go back to original document, which is -- I signed

1 for --

2 MR. PARKER: Can you go back?

3 A. -- I signed for the Japanese document. And
4 the top of this section, please pull it up. Eighty-four
5 hundred thousand (sic), that's correct.

6 Q. (By Mr. Parker) And that's U.S. dollars,
7 correct?

8 A. That's U.S. dollars, yes, that's correct.

9 Q. All right. And you agreed to that number,
10 correct?

11 A. That's right.

12 MR. PARKER: And can we see which patents
13 that covered.

14 Q. (By Mr. Parker) Does that -- does -- I can't
15 tell, but I think probably you can. Does that list the
16 patents that are covered by this agreement?

17 A. Well, I'm not an expert to analyze the
18 agreement, but I do believe that -- well, I guess --
19 would you mind to show what -- the one page before of
20 this page?

21 Q. I mean, I'm at your mercy.

22 A. Well, I do believe that this patent covers
23 more than one patent, yes.

24 Q. Okay. And the document does list multiple
25 patents that are covered by it.

1 A. Well, if -- if this original document does
2 have a list, of course. But I haven't seen this --
3 whole pages of this document, so...

4 Q. Did you sign this document originally?

5 A. Yes. This is --

6 MR. PARKER: Can we find that?

7 A. I mean -- well, of course, we don't sign the
8 Japanese agreement. We used the corporate seal and
9 stamp on it. And of course, it's the same thing as
10 signing on the document.

11 Q. (By Mr. Parker) Okay. I understand that.
12 And your company's corporate seal was placed on this
13 document with your permission, correct?

14 A. That's right. I mean, I did -- I did seal on
15 it by myself.

16 Q. And you intended to transfer multiple patents
17 to NEC Corporation -- the license to multiple patents to
18 NEC Corporation for \$84,000?

19 A. Well, first of all, would you mind to go back
20 to the first page? I'm not sure this is the license
21 agreement or not.

22 Q. Okay.

23 A. Well, you used the term of licensing
24 agreement. I'm not sure this is a license agreement or
25 not.

1 Q. What would you call it?

2 A. Well, I call it the -- a patent non-assertion
3 agreement.

4 Q. All right. Now -- and we might as well get to
5 that right now, because some of these documents are
6 called -- you're right. Let's be precise.

7 Some of these documents are referred to as
8 license agreements and others are called non-assertion
9 agreements; is that -- is that correct?

10 A. To my knowledge, yes.

11 Q. Of the 16 that we're going to look at that you
12 negotiated.

13 Now, the license agreement says it grants a
14 license.

15 The non-assertion agreement says that if you
16 use -- if you employ -- you, NEC, employ or use these
17 patents, in return for paying the \$84,000, I will not
18 assert any infringement against you, okay?

19 A. Well, that's my understanding, yes.

20 Q. Okay. So, in effect, whether we call it a
21 license agreement or a non-infringement agreement, the
22 company that you accept the money from has the right to
23 use the patents that are listed in there on a worldwide,
24 nonexclusive basis, and they're not going to be accused
25 of infringing if they do so, no matter what we call the

1 document.

2 A. Well, it's very complicated, and I just don't
3 understand it.

4 It says -- the only thing I understand, this
5 is not the license agreement, so I'm not sure -- I did
6 license one or more than one patent to the NEC. I just
7 don't know.

8 Q. Okay. I don't want to fence with you about
9 semantics.

10 If we call it a non-assertion agreement or if
11 a document is titled a non-assertion agreement, the
12 effect of that is, in return for money, the person or
13 company agreeing with you gets the right to use the
14 listed patents on a nonexclusive, worldwide basis, and
15 you will not assert any claim of infringement against
16 them, okay?

17 A. Well, it's -- it's a lot of legal term, and my
18 answer is, I don't know. I don't even know the
19 difference between a license agreement and a
20 non-assertion agreement.

21 Q. Do you even understand, sir -- I mean,
22 you're -- you've already told us that you approved your
23 corporate seal being put on this non-assertion
24 agreement.

25 A. That's right.

1 Q. Are you saying that you're in the habit of
2 running --

3 A. Of course --

4 Q. I'm sorry. Let me finish this time.

5 A. Sure.

6 Q. Are you saying you're in the habit of running
7 this company and having your corporate seal put on a
8 document that you don't understand?

9 A. That's right. Sir, I mean that the -- I don't
10 understand each term of the legal document. That's why
11 I -- I asked -- appealed to the attorneys.

12 Q. On a basic level, do you understand that it
13 gives the party that you accept the money from the right
14 to use your patents?

15 A. Well, my understanding of non-assertion is
16 that your -- I don't assert my right to the company who
17 has the agreement with.

18 Q. So, in effect, they have the right to use your
19 patent in return for paying you money.

20 A. Well, I agree -- I agree with that, yes.

21 Q. That -- I mean, that's in its simplest terms;
22 is that correct?

23 A. Uh-huh, that's correct, yes.

24 Q. Whether we call it a license agreement or a
25 non-assertion agreement.

1 A. Like I said, I don't understand even the
2 difference between a license agreement and a
3 non-assertion agreement, so I don't know.

4 Q. Okay. But you did understand when you signed
5 this document or when, to be precise, the corporate seal
6 of LaserDynamics was placed on this document, it gave
7 NEC the right to use the patents that were listed in the
8 document, correct?

9 A. Well, I don't understand the scope of this
10 agreement, but I do follow this agreement, because I
11 sign it.

12 MR. PARKER: Trial Exhibit 91.

13 Q. (By Mr. Parker) Is this the agreement you --

14 MR. PARKER: I'm sorry. Is it up there?

15 Q. (By Mr. Parker) -- the agreement that you
16 entered into with Sony?

17 A. Again, this is a translation, and I do believe
18 that I made agreement with Sony in Japanese.

19 Q. Okay. And we can show you the Japanese
20 version, if you want to see it.

21 Do you recognize this as a copy of the
22 original agreement that you entered into with Sony?

23 A. Yes, I do.

24 Q. Okay. And is it okay if we go back to the
25 translated version?

1 A. Sure.

2 Q. Okay. And do you recall how much Sony paid?

3 A. Well, I believe -- well, I believe this
4 translation is correct, and the amount is \$126,000.

5 Q. And do you know what patents this covered?

6 A. Well, again, this is -- I believe this is not
7 the license agreement, so --

8 Q. I agree. This is another one of those
9 non-assertion agreements.

10 A. That's right.

11 MR. PARKER: Can we see what patents are
12 covered by it, please.

13 Q. (By Mr. Parker) And that covers the '981
14 patent; is that right?

15 A. That's right.

16 Q. Do you need to see that in the Japanese
17 version?

18 A. For this question, I don't think so.

19 Q. Okay. And Sony Corporation paid you \$126,000;
20 is that correct?

21 A. That's right.

22 Q. In October of 1998?

23 A. Could I see the page that has a date on it?

24 Q. Sure.

25 MR. PARKER: Could we get that?

1 A. The date should be on the last page, I
2 believe.

3 Q. (By Mr. Parker) It should be on the first page
4 and the last page, but we'll...

5 A. October 1st, 1998, that's correct.

6 Q. Okay. All right. And your company seal was
7 affixed to this document with your agreement, correct?

8 A. That's right.

9 Q. Was this another one of those that was
10 negotiated by your attorney?

11 A. Well, with this Sony, I believe this -- this
12 is negotiated by my Japanese patent attorney,
13 Mr. Hagihara, yes.

14 Q. Okay. But once he had completed those
15 negotiations, you agreed to the terms, did you not?

16 A. Of course I did.

17 Q. Okay.

18 MR. PARKER: Now let's look at Trial
19 Exhibit 77.

20 Q. (By Mr. Parker) At some point in time, did you
21 enter into a license agreement with Toshiba?

22 A. Yes, I did.

23 Q. Okay. And is your company seal affixed to
24 this document?

25 MR. PARKER: Go to the end.

1 A. Yes, I do see it.

2 Q. (By Mr. Parker) And that was --

3 A. Excuse me. This is not my company's seal.

4 I -- I believe I made agreement with Toshiba when I was
5 still -- I didn't have a company. So this is my
6 personal seal.

7 Q. All right. And was this one of the things
8 that was assigned to LaserDynamics later?

9 A. That's right.

10 Q. Okay. But in any event, your personal seal is
11 on this document, and you agreed to it.

12 A. I sign the document, I sign agreement, and my
13 company also sign the -- the supplement of the
14 agreement, so, of course, this agreement is effective
15 both on me and LaserDynamics, yes.

16 Q. Okay.

17 MR. PARKER: And could we see the
18 consideration, the amount of money paid in this one.
19 Okay. We're getting there.

20 Q. (By Mr. Parker) And there was a formula here,
21 but, ultimately, there was a one-time payment.

22 Do you understand that?

23 A. Yes, I do believe so. That was a one-time
24 payment.

25 Q. And we'll see if we can get to it.

1 So it was for -- I think that means 7,875,000
2 yen, correct?

3 A. That's right.

4 Q. And do you understand, at that point in time,
5 that you would get the dollar number by dividing that
6 number by a hundred?

7 A. Well, that's fair enough, yes.

8 Q. So it would be approximately \$80,000 U.S.?

9 A. I agree with you, yes.

10 Q. More or less?

11 MR. PARKER: And can we see what that
12 covered, please.

13 Q. (By Mr. Parker) And, again, that is for the
14 '981 patent, correct?

15 A. Could I see the first page?

16 Q. Sure.

17 A. Well, again, this is the non-assertion
18 agreement, so I didn't license the patent, but like you
19 said, this agreement covers more than one patent.

20 Q. Okay.

21 A. That's right.

22 Q. And it covers more than one patent for
23 whatever that converted amount of money is, 75 or
24 \$80,000 at that time period, correct?

25 A. That's correct.

1 Q. All right. And was this another one that
2 your Japanese patent counsel negotiated for you?

3 A. With Toshiba, yes, that's correct.

4 Q. Okay. But, ultimately, you agreed to what he
5 had negotiated, including the figure?

6 A. Of course I did.

7 Q. And including the fact that it covered more
8 than just the '580 -- the '981 patent, rather.

9 A. It looks to me, yes.

10 Q. Okay.

11 MR. PARKER: Now let's look at Trial
12 Exhibit 80.

13 Q. (By Mr. Parker) Do you recall that you entered
14 into a license agreement with Hitachi Corporation?

15 A. Well, I believe it's a translation, but, yes,
16 I do have an agreement with Hitachi.

17 Q. All right. And that was April of 1998? Did
18 you find the date?

19 A. Well, I do believe that translation is
20 correct, so that's correct.

21 Q. Okay. And the license agreement with Hitachi
22 was for what amount? Again, that's in yen?

23 A. Yes. This is Japanese yen. It looks to me
24 it's 31,250,000 Japanese yen.

25 Q. And do you understand, at that time, that

1 would have correlated to about \$266,000?

2 A. Well, I don't know the rate, but it sounds to
3 me that's fine.

4 Q. I mean -- I mean, in approximate terms.

5 A. Sure.

6 Q. You're familiar with the conversion, right?

7 A. Sure.

8 Q. Okay. And that fee was a result of
9 give-and-take negotiations between you and the other
10 party to the contract, Hitachi, correct?

11 A. Negotiation is done by my Japanese patent
12 attorney and Hitachi representative.

13 Q. Okay. And that one included more than the
14 '981 patent, also, right?

15 A. I do believe so.

16 Q. So for their 226-odd-thousand dollars, they
17 got multiple patents.

18 A. This agreement included more than one patent,
19 that's correct.

20 Q. And that was a one-time payment.

21 A. One-time payment, that's right.

22 Q. All right.

23 MR. PARKER: Okay. Let's look at Trial
24 Exhibit 88.

25 Q. (By Mr. Parker) And do you recall that at some

1 point in the latter part of 1988, you entered into an
2 agreement with Yamaha Corporation?

3 A. That's correct.

4 Q. And does this agreement include your either
5 personal or corporate seal?

6 A. This agreement contains both.

7 Q. But --

8 A. Both of my corporate seal and my personal
9 seal.

10 Q. So you did agree to the document?

11 A. That's right.

12 Q. And this license agreement is for \$65,000?

13 A. Well, it's plus taxes, but --

14 Q. You're right. 65,000 base, and then there was
15 \$3,250 in taxes that was also paid by Yamaha
16 Corporation.

17 A. That's correct.

18 Q. Okay. And this is a one-time payment.

19 A. That's right.

20 Q. Do you know how many patents it covers?

21 A. Well, I can't count the number, but it include
22 more than one patent.

23 Q. It's definitely more than just the '981
24 patent, right?

25 A. I believe so, yes.

1 Q. Okay. And that's for \$68,250 one time.

2 A. That's right.

3 Q. Okay.

4 MR. PARKER: Now let's look at Trial
5 Exhibit 89.

6 Q. (By Mr. Parker) Another agreement you entered
7 into in late 1998, and this one is with Sanyo
8 Corporation, correct?

9 A. That's correct.

10 Q. And your seal is affixed to it, is it not?

11 A. Yes. It contains the -- both my corporate
12 seal and my personal seal, yes.

13 Q. So you agreed to the document?

14 A. That's right.

15 Q. And the amount that was paid?

16 A. Well, I do believe the translation is correct,
17 63,000 U.S. dollar.

18 Q. And how many patents were covered?

19 A. Well, I do believe it's more than -- more than
20 one patent.

21 Q. So, again, your Sanyo Corporation is getting
22 multiple patents for \$63,000, not just the '981 patent.

23 A. That's correct.

24 Q. Okay. And, again, that's a one-time payment,
25 no continuing royalty?

1 A. That's correct.

2 Q. Okay.

3 MR. PARKER: Now let's look at Trial
4 Exhibit 90.

5 Q. (By Mr. Parker) Now, do you recall that at
6 some point in the latter part of 1998, you entered into
7 an agreement with Sharp Corporation?

8 A. That's correct.

9 Q. And your seal is on this document?

10 A. Yes, I did.

11 Q. Okay. So you -- you agreed to whatever the
12 terms were?

13 A. That's right.

14 Q. And Sharp Corporation paid \$84,000?

15 A. That's right.

16 Q. And this agreement covered more than just the
17 '981 patent, did it not?

18 A. I believe so, yes.

19 Q. So, again, Sharp got more than the '981 patent
20 for \$84,000, and they only had to pay that one time.

21 A. That's right.

22 Q. Okay.

23 MR. PARKER: Now let's look at
24 Exhibit 92.

25 Q. (By Mr. Parker) Do you recall that near the

1 end of 1998, you entered into an agreement with Onkyo
2 Corporation?

3 A. That's correct.

4 Q. And your company's seal is affixed to this
5 document?

6 A. Yes, I did.

7 Q. Meaning you agreed to it?

8 A. Yes, I did.

9 Q. And the license fee was 50,000 -- \$57,750?

10 A. Well, I believe so, yes, that's correct.

11 Q. And what patents did it cover?

12 A. I include the '981 patent and all patents
13 which I used to have when I signed this document.

14 Q. So for the \$57,750, Onkyo Corporation got
15 multiple patents, correct?

16 A. More than one patent, that's correct.

17 Q. And that was a one-time payment?

18 A. That's right.

19 Q. Okay.

20 MR. PARKER: And let's look at Trial
21 Exhibit 67.

22 Q. (By Mr. Parker) Do you recall, at some point,
23 you entered into an agreement with Pioneer Corporation?

24 A. That's right.

25 MR. PARKER: And let's see what Pioneer

1 Corporation paid.

2 Q. (By Mr. Parker) Pioneer Corporation paid
3 100,000 in fee and \$5,000 in taxes; is that correct?

4 A. That's correct.

5 Q. And what patents did it cover?

6 A. I include the '981 patent. I do believe it's
7 more than one patent.

8 Q. More than one patent for the \$100,000, plus
9 \$5,000 in taxes?

10 A. That's correct.

11 Q. And that's a one-time payment by Pioneer
12 Corporation?

13 A. That's correct.

14 Q. Okay.

15 MR. PARKER: Let's look at Trial
16 Exhibit 95.

17 Q. (By Mr. Parker) That takes us into the middle
18 of 1999.

19 Do you recall that you entered into an
20 agreement with LG Electronics?

21 A. That's correct.

22 Q. Okay. And that agreement includes your seal?

23 A. Well, I believe -- I believe this is agreement
24 based on English, so I did sign it, yes, I did.

25 Q. So this one is executed more traditionally.

1 A. Yeah, that's right.

2 Q. Or more traditionally for us, not more
3 traditionally for you.

4 A. That's correct.

5 Q. Okay. I didn't mean to sound like I was
6 saying anything inappropriate.

7 So this was executed by you on behalf of
8 LaserDynamics Corporation, correct?

9 A. That's correct.

10 Q. And the fee that was paid by LG Electronics
11 was \$95,000?

12 A. That's correct.

13 Q. And that was -- that included more than the
14 '981 patent?

15 A. I believe so, yes.

16 Q. And that payment was a one-time payment, not
17 any kind of ongoing royalty, correct?

18 A. That's correct.

19 MR. PARKER: Let's look at Trial
20 Exhibit 94.

21 Q. (By Mr. Parker) Do you recall also in the
22 middle of 1999 entering into an agreement with the
23 Clarion Corporation?

24 A. That's correct.

25 Q. And the fee for that was \$60,000?

1 A. That's correct.

2 Q. And what did it cover?

3 A. Well, I do believe it's more than one patent,
4 including the '981 patent.

5 Q. So for 60 -- \$60,000, the Clarion Corporation
6 got the right to multiple patents?

7 A. That's correct.

8 Q. And they only had to pay it one time?

9 A. Only one time, that's correct.

10 Q. All right.

11 MR. PARKER: And so let's look at Trial
12 Exhibit 98.

13 Q. (by Mr. Parker) And do you recall that at some
14 point, you entered into an agreement with Mitsubishi
15 Corporation?

16 A. That's correct.

17 MR. PARKER: And let's look at the end of
18 this document and see how it was executed.

19 Q. (By Mr. Parker) And that is one of the ones
20 that does include the corporate seal?

21 A. Yes, it does.

22 Q. Meaning you agreed to it?

23 A. That's right.

24 Q. Okay. And there was a negotiated fee, and the
25 amount of the fee was -- I think that is 18 million yen;

1 is that correct?

2 A. 18 million and 900,000 Japanese yen.

3 Q. Almost 19 million, yeah.

4 A. That's correct.

5 Q. And so if you divide that by a hundred more or
6 less, about \$190,000?

7 A. That's correct.

8 Q. Okay. And this was an agreement that covered
9 more than just the '981 patent, correct?

10 A. I believe so, yes.

11 Q. And it was a one-time payment?

12 A. That's correct.

13 MR. PARKER: Now let's look at Trial
14 Exhibit 96.

15 Q. (By Mr. Parker) Do you recall that you entered
16 an agreement with the TEAC Corporation?

17 A. That's correct.

18 Q. Okay.

19 MR. PARKER: And can we look at the end
20 of this one and see how it --

21 Q. (By Mr. Parker) And that contains your
22 corporate seal?

23 A. Yes, it does.

24 Q. Meaning, once again, that you agreed to it?

25 A. That's right.

1 Q. And the fee that was paid by TEAC is \$70,000?

2 A. That's correct.

3 Q. Okay. And what does that agreement cover?

4 A. Well, include your '981 patent, and I believe
5 it's -- more than one patent is covered by this
6 agreement.

7 Q. So for the \$70,000, TEAC got multiple patents,
8 and that was a one-time payment?

9 A. That's correct.

10 Q. Okay.

11 MR. PARKER: Now let's look at Trial
12 Exhibit 99.

13 Q. (By Mr. Parker) And do you recall that in the
14 year 2000, you entered into an agreement with the
15 Kenwood Corporation?

16 A. That's correct.

17 MR. PARKER: And let's look at the end of
18 that one. I think that may be another one. It's
19 signed.

20 Q. (by Mr. Parker) And, again, that reflects your
21 signature on behalf of LaserDynamics Corporation?

22 A. That's correct.

23 Q. Okay. And the amount of fee that was paid by
24 the Kenwood Corporation is \$100,000; is that correct?

25 A. Yes, that is correct, yes.

1 Q. Okay. And what did that cover?

2 A. Well, I do believe it's -- it covers more than
3 one patent, including the '981 patent.

4 Q. So the -- again, the Kenwood Corporation got
5 the right to multiple patents for a one-time payment of
6 \$100,000?

7 A. That's correct.

8 MR. PARKER: Let's look at Trial
9 Exhibit 102. Excuse me.

10 Q. (by Mr. Parker) Do you recall that you
11 entered -- at some point, you entered into an agreement,
12 also in 2000, with the Ricoh Corporation?

13 A. That's correct.

14 MR. PARKER: Could we look at the end of
15 that?

16 Q. (by Mr. Parker) And that document contains
17 your corporate seal?

18 A. Yes, it does.

19 Q. Indicating that you agreed to it, correct?

20 A. That's correct.

21 Q. Okay. And that license agreement is, I think,
22 also in yen, and it's 15,075,000 yen, correct?

23 A. I believe it is correct.

24 Q. And this one actually calculated from a neat
25 thing on the internet.

1 Would you agree with me that that's
2 approximately \$135,675 as of that date?

3 A. Well, I don't know exactly the rate. I think
4 it's fair enough, yes.

5 Q. I'm teasing you a little bit, Mr. Kamatani.
6 Do you agree that the amount is about \$135,000?

7 A. Well, I guess so, I mean, if the rate is
8 correct.

9 Q. Okay. And did that cover more than just the
10 '981 patent?

11 A. I do -- I do believe so, yes.

12 Q. And for this 135,000-dollar payment, more or
13 less, Ricoh Corporation got the right to multiple
14 patents; is that correct?

15 A. That's correct.

16 Q. And they only had to make that payment one
17 time?

18 A. That's correct.

19 Q. Now, isn't it a fact that the strategy that
20 was employed by LaserDynamics in negotiating all of the
21 license agreements that we've looked at here today was
22 that, for small companies, the goal was around 50,000,
23 for medium-sized companies, it was around 100,000, and
24 for big companies, it was around 200,000? That was the
25 general approach.

1 A. Well, I didn't have any general approach.
2 Actually, I negotiated with a case-by-case basis.

3 At the time -- I mean, the term of -- when I
4 was making agreements between 1998 to 1999, of course,
5 I -- most of the time, my patent attorney approached to
6 the company, and based upon how big the company is and
7 how much interest they're paying for the DVD business,
8 based upon those issues, and basically, we decided the
9 amount of the license or any other agreement.

10 Q. You didn't understand --

11 THE COURT: We'll stop our question now.
12 It's noon. I know that y'all want to go on, but the
13 jury and I would sort of like to have lunch.

14 All right, Ladies and Gentlemen. I'm
15 going to excuse you at this time until 1:15. Be ready
16 to come back in the courtroom at 1:15.

17 It's real important now -- you'll hear
18 this over and over, though -- that you not discuss this
19 matter during these breaks, and do not discuss it
20 because you've got to wait and keep an open mind until
21 we've heard all the evidence. So don't discuss this
22 case during the breaks.

23 Have a nice lunch, and I'll see you at
24 1:15.

25 (Jury out.)

1 THE COURT: All right. Court's in recess
2 until 1:15.

3 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

Date

/s/_____
JUDY WERLINGER, CSR
Official Court Reporter
State of Texas No.:
Expiration Date: 12/31/10

Date

/s/_____
SHELLY HOLMES, CSR
Deputy Official Court Reporter
State of Texas No.: 7804
Expiration Date 12/31/10

Date